

The Gazette of India

EXTRAORDINARY

PART II—Section 2

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LOK SABHA

The following Bills were introduced in Lok Sabha on the 15th June, 1962:—

*BILL No. 56 OF 1962

A Bill to consolidate and amend the law relating to customs.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Customs Act, 1962.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Govern-
ment may, by notification in the Official Gazette, appoint.

Short title,
extent and
commence-
ment.

2. In this Act, unless the context otherwise requires,—

10 (1) "aircraft" has the same meaning as in the Aircraft Act,
1934;

Definitions.

(2) "assessment" includes provisional assessment, re-assess-
ment and any order of assessment in which the duty assessed is
nil;

15 (3) "baggage" includes unaccompanied baggage but does not
include motor vehicles;

(4) "bill of entry" means a bill of entry referred to in section
46;

20 (5) "bill of export" means a bill of export referred to in
section 50;

(6) "Board" means the Central Board of Revenue constituted
under the Central Board of Revenue Act, 1924;

(7) "coastal goods" means goods, other than imported goods,
transported in a vessel from one port in India to another;

25 (8) "Collector of Customs" includes an Additional Collector
of Customs;

*The President has, in pursuance of clauses (1) and (3) of article 117 and clause (1) of article 274 of the Constitution of India, recommended to Lok Sabha the introduction and consideration of the Bill.

- (9) "conveyance" includes a vessel, an aircraft and a vehicle;
- (10) "customs airport" means any airport appointed under clause (a) of section 7 to be a customs airport;
- (11) "customs area" means the area of a customs station and includes any area in which imported goods or export goods are 5 ordinarily kept before clearance by Customs Authorities;
- (12) "customs port" means any port appointed under clause (a) of section 7 to be a customs port;
- (13) "customs station" means any customs port, customs airport or land customs station; 10
- (14) "dutiabale goods" means any goods which are chargeable to duty and on which duty has not been paid;
- (15) "duty" means a duty of customs leviable under this Act;
- (16) "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the 15 case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84;
- (17) "examination", in relation to any goods, includes measurement and weighment thereof; 20
- (18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (19) "export goods" means any goods which are to be taken out of India to a place outside India;
- (20) "exporter", in relation to any goods at any time between 25 their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter;
- (21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or 30 passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes—
- (i) any naval vessel of a foreign Government taking part in any naval exercises; 35
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
- (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;
- (22) "goods" includes— 40
- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (e) any other kind of moveable property; 45

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(24) "import manifest" or "import report" means the manifest or report required to be delivered under section 30;

5 (25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

10 (26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;

(27) "India" includes the territorial waters of India;

15 (28) "Indian customs waters" means the waters extending into the sea to a distance of twelve nautical miles measured from the appropriate base line on the coast of India and includes any bay, gulf, harbour, creek or tidal river;

(29) "land customs station" means any place appointed under clause (b) of section 7 to be a land customs station;

20 (30) "market price", in relation to any goods, means the wholesale price of such goods in the ordinary course of trade in India;

(31) "person-in-charge" means,—

(a) in relation to a vessel, the master of the vessel;

25 (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;

(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

(d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;

30 (32) "prescribed" means prescribed by regulations made under this Act;

35 (33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

40 (34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Collector of Customs;

(35) "regulations" means the regulations made by the Board under any provision of this Act;

(36) "rules" means the rules made by the Central Government under any provision of this Act;

(37) "shipping bill" means a shipping bill referred to in section 50;

(38) "stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

(40) "tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14;

(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) of section 14;

(42) "vehicle" means conveyance of any kind used on land and includes a railway vehicle;

(43) "warehouse" means a public warehouse appointed under section 57 or a private warehouse licensed under section 58;

(44) "warehoused goods" means goods deposited in a warehouse;

(45) "warehousing station" means a place declared as a warehousing station under section 9.

CHAPTER II

OFFICERS OF CUSTOMS

Classes of
officers of
customs.

3. There shall be the following classes of officers of customs, namely :—

- (a) Collectors of Customs;
- (b) Deputy Collectors of Customs;
- (c) Assistant Collectors of Customs; and
- (d) such other class of officers of customs as may be appointed for the purposes of this Act.

Appoint-
ment of
officers of
customs.

4. (1) The Central Government may appoint such persons as it thinks fit to be officers of customs.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Board, a Collector of Customs or a Deputy or Assistant Collector of Customs to appoint officers of customs below the rank of Assistant Collector of Customs.

Powers of
officers of
customs.

5. (1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

6. The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.

Entrustment of functions of Board and customs officers on certain other officers.

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CHAPTER III

APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, WAREHOUSING STATIONS, ETC.

7. The Central Government may, by notification in the Official Gazette, appoint—

Appointment of customs ports, airports, etc.

10 (a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;

(b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;

15 (c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;

20 (d) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

8. The Collector of Customs may—

25 (a) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;

(b) specify the limits of any customs area.

Power to approve landing places and specify limits of customs area.

9. The Board may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

Power to declare places to be warehousing stations.

30 10. The Collector of Customs may, by notification in the Official Gazette, appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of customs.

Appointment of boarding stations.

CHAPTER IV

35 PROHIBITIONS ON IMPORTATION AND EXPORTATION OF GOODS

11. (1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance)

Power to prohibit importation or exportation of goods.

as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following:—

- (a) the maintenance of the security of India; 5
- (b) the maintenance of public order and standards of decency or morality;
- (c) the prevention of smuggling;
- (d) the prevention of shortage of goods of any description;
- (e) the conservation of foreign exchange and the safeguard- 10
ing of balance of payments;
- (f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
- (g) the prevention of surplus of any agricultural product or the product of fisheries; 15
- (h) the maintenance of standards for the classification, grading or marketing of goods in international trade;
- (i) the establishment of any industry;
- (j) the prevention of serious injury to domestic production of goods of any description; 20
- (k) the protection of human, animal or plant life or health;
- (l) the protection of national treasures of artistic, historic or archæological value;
- (m) the conservation of exhaustible natural resources;
- (n) the protection of patents, trade marks and copyrights; 25
- (o) the prevention of deceptive practices;
- (p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;
- (q) the fulfilment of obligations under the Charter of the 30
United Nations for the maintenance of international peace and security;
- (r) the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India; 35
- (s) the prevention of dissemination of documents containing any matter which prejudicially affects friendly relations with any foreign State or is derogatory to national prestige;

(t) the prevention of the contravention of any law for the time being in force; and

(u) any other purpose conducive to the interests of the general public.

5

CHAPTER V

LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

32 of 1934.

12. (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Indian Tariff Act, 1934, or any other law for the time being in force, on goods imported into, or exported from, India. Dutiable goods.

(2) The provisions of sub-section (1) shall apply in respect of—

(a) all goods belonging to the Central Government; and

15 (b) all goods belonging to the Government of a State and used for the purposes of a trade or business of any kind carried on by, or on behalf of, that Government, or of any operations connected with such trade or business;

as they apply in respect of goods not belonging to any Government.

20 13. If any imported goods are pilfered after the unloading thereof and before clearance for home consumption or deposit in a warehouse, the importer shall be liable to pay the duty leviable on such goods. Importer to pay duty on pilfered goods.

32 of 1934.

14. (1) For the purposes of the Indian Tariff Act, 1934, or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be— Valuation of goods for purposes of assessment.

30 (a) the normal price at which such or like goods are sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the ordinary course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale;

(b) where the normal price is not ascertainable, the nearest ascertainable equivalent of such price determined in accordance with the rules made in this behalf.

35 (2) Notwithstanding anything contained in sub-section (1), if the Central Government is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

40

Date for
determination
of rate of
duty and
tariff valua-
tion of im-
ported goods.

15. (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,—

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section; 5

(b) in the case of goods cleared from a warehouse under section 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty : 10

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this section shall not apply to baggage and goods imported by post. 15

Date for
determina-
tion of rate
of duty and
tariff valua-
tion of ex-
port goods.

16. (1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,—

(a) in the case of goods entered for export under section 50, on the date on which a shipping bill or a bill of export in respect of such goods is presented under that section; 20

(b) in the case of any other goods, on the date of payment of duty :

Provided that if the shipping bill has been presented before the date of entry outwards of the vessel by which the goods are to be exported, the shipping bill shall be deemed to have been presented on the date of such entry outwards. 25

(2) The provisions of this section shall not apply to baggage and goods exported by post.

Assessment
of duty.

17. (1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer. 30

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed. 35

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue 40

or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter
5 or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis
10 of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter
15 relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

18. (1) Notwithstanding anything contained in this Act but with-
out prejudice to the provisions contained in section 46—

Provisional
assessment
of duty.

20 (a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

25 (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or

(c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to
30 make further enquiry for assessing the duty;

the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be,
35 furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

(2) When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then—

40 (a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of, the finally assessed, the importer or the exporter

of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

Determina-
tion of duty
where goods
consist of
articles liable
to different
rates of duty.

19. Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows:—

(a) articles liable to duty with reference to quantity shall be chargeable to that duty;

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):

Provided that,—

(a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;

(b) if the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

Re-importa-
tion of goods
produced or
manufactured
in India.

20. (1) If goods produced or manufactured in India be imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value not so produced or manufactured are liable or subject, on the importation thereof :

Provided that if such importation takes place within three years after the exportation of such goods and it is shown to the satisfaction of the Assistant Collector of Customs that the goods are the same which were exported, the goods may be admitted—

(a) in any case where at the time of exportation of the goods, drawback of any customs or excise duty levied by the Union or both was allowed, on payment of customs duty equal to the amount of such drawback;

(b) in any case where at the time of exportation of the goods, drawback of any excise duty levied by a State was allowed, on payment of customs duty equal to such excise duty leviable at the time and place of importation of the goods;

5 (c) in any case where the goods were exported in bond, without payment of—

(i) the customs duty leviable on the imported materials, if any, used in the manufacture of the goods, or

10 (ii) the excise duty leviable on the indigenous materials, if any, used in the manufacture of the goods, or

(iii) the excise duty, if any, leviable on the goods, on payment of customs duty equal to the aggregate amount of all such duties calculated at the rates prevailing at the time and place of importation of the goods;

15 (d) in any other case, without payment of duty.

(2) For the purposes of this section goods shall be deemed to have been produced or manufactured in India, if at least twenty-five per cent. of the total cost of production or manufacture of the goods has been incurred in India.

20 21. All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that Goods derelict, wreck, etc. they are entitled to be admitted duty-free under this Act.

25 22. (1) Where it is shown to the satisfaction of the Assistant Collector of Customs— Abatement of duty on damaged or deteriorate goods.

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or

30 (b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or

35 (c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

40 (2) The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the

goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.

(3) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following 5 methods at the option of the owner:—

(a) the value of such goods may be ascertained by the proper officer, or

(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any 10 other manner, and the gross sale proceeds shall be deemed to be the value of such goods.

Remission
of duty on
lost, destroy-
ed or abandon-
ed goods.

23. (1) Where it is shown to the satisfaction of the Assistant Collector of Customs that any imported goods have been lost other- 15 wise than by pilferage or have been destroyed, at any time before clearance for home consumption, the Assistant Collector of Customs shall remit the duty on such goods.

(2) The owner of any imported goods may at any time before clearance of the goods for home consumption, relinquish his title to the goods if they have not been pilfered and thereupon the Assistant 20 Collector of Customs shall remit the duty thereon and sell the goods:

Provided that if the goods are not saleable, the Assistant Collector may require the owner to destroy them.

Power to
make rule
for denatur-
ing or
mutilation of
goods.

24. The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported 25 goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form. 30

Power to
grant
exemption
from duty.

25. (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such 35 conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

26. Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if— Refund of export duty in certain cases.

(a) the goods are returned to such person otherwise than by way of re-sale;

(b) the goods are re-imported within one year from the date of exportation; and

(c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

27. (1) Any person claiming refund of any duty paid by him in pursuance of an order of assessment made by an officer of customs lower in rank than an Assistant Collector of Customs may make an application for refund of such duty to the Assistant Collector of Customs before the expiry of six months from the date of payment of duty: Claim for refund of duty.

Provided that the limitation of six months shall not apply where any duty has been paid under protest.

Explanation.—Where any duty is paid provisionally under section 18, the period of six months shall be computed from the date of adjustment of duty after the final assessment thereof.

(2) If on receipt of any such application the Assistant Collector of Customs is satisfied that the whole or any part of the duty paid by the applicant should be refunded to him, he may make an order accordingly.

(3) Where, as a result of any order passed in appeal or revision under this Act, refund of any duty becomes due to any person, the proper officer may refund the amount to such person without his having to make any claim in that behalf.

(4) Save as provided in section 26, no claim for refund of any duty shall be entertained except in accordance with the provisions of this section.

28. (1) When any duty has not been levied or has been short-levied or erroneously refunded, the proper officer may, within six months from the relevant date, issue notice to the person chargeable with the duty which has not been levied or which has been so short-levied or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice: Notice for payment of duties not levied, short-levied or erroneously refunded.

Provided that where any duty has not been levied or has been short-levied or has been erroneously refunded by reason of collusion

or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if the words "within six months from the relevant date" were omitted.

(2) The Assistant Collector of Customs, after considering the re- 5 presentation, if any, made by the person to whom notice is issued under sub-section (1) shall determine the amount of duty due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) For the purposes of sub-section (1), the expression "relevant 10 date" means—

(a) in a case where duty is not levied, the date on which the proper officer makes an order for the clearance of the goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment 15 thereof;

(c) in a case where duty has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty.

CHAPTER VI

20

PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED OR EXPORT GOODS

Arrival of
vessels and
aircrafts in
India.

29. The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land— 25

(a) for the first time after arrival in India; or

(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft;

at any place other than a customs port or a customs airport, as the case may be, unless he is compelled to do so by stress of weather, 30 accident or other unavoidable cause.

Delivery of
import
manifest
or import
report.

30. (1) The person-in-charge of a conveyance carrying imported goods shall, immediately after arrival thereof at a customs station, deliver to the proper officer, in the case of a vessel or aircraft, an import manifest, and in the case of a vehicle, an import report, in 35 the prescribed form:

Provided that,—

(a) in the case of a vessel any such manifest may be delivered to the proper officer before the arrival of the vessel;

(b) if the proper officer is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof immediately after the arrival of the conveyance, he may accept it after such arrival.

5 (2) The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there
10 was no fraudulent intention, he may permit it to be amended or supplemented.

31. (1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

15 (2) No order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

(3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags,
20 animals, perishable goods and hazardous goods.

32. No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being
25 unloaded at that customs station.

33. Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

30 34. Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer:

Provided that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular
35 case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

35. No imported goods shall be water-borne for being landed from any vessel, and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are
40 accompanied by a boat-note in the prescribed form.

Provided that the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

Restrictions on unloading and loading of goods on holidays, etc.

36. No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the working hours, except after giving the prescribed notice and on payment of the prescribed fees:

Provided that no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

Power to board conveyances.

37. The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period as he considers necessary. 15

Power to require production of documents and ask questions.

38. For the purposes of carrying out the provisions of this Act, the proper officer may require the person-in-charge of any conveyance or animal carrying imported goods or export goods to produce any document and to answer any questions and thereupon such person shall produce such documents and answer such questions. 20

Export goods not to be loaded on vessel until entry-outwards granted.

39. The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

Export goods not to be loaded unless duly passed by proper officer.

40. The person-in-charge of a conveyance shall not permit the loading at a customs station— 25

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter; 30

(b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

Delivery of export manifest or export report.

41. (1) The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form: 35

Provided that if the proper officer is satisfied that there was sufficient cause for not delivering the export manifest or export report or any part thereof before the departure of the conveyance, he may accept it after such departure. 40

(2) The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

42. (1) The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer. No conveyance to leave without written order.

(2) No such order shall be given until—

(a) the person-in-charge of the conveyance has answered the questions put to him under section 38;

(b) the provisions of section 41 have been complied with;

(c) the shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;

(d) all duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;

(e) the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(f) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods,—

(i) such goods have been unloaded, or

(ii) where the Assistant Collector of Customs is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

43. (1) The provisions of sections 30, 41 and 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants. Exemption of certain classes of conveyances from certain provisions of this Chapter.

(2) The Central Government may, by notification in the Official Gazette, exempt the following classes of conveyances from all or any of the provisions of this Chapter—

(a) conveyances belonging to the Government or any foreign Government;

(b) vessels and aircrafts which temporarily enter India by reason of any emergency.

CHAPTER VII

CLEARANCE OF IMPORTED GOODS AND EXPORT GOODS

Chapter not to apply to baggage and postal articles.

44. The provisions of this Chapter shall not apply to (a) baggage,¹⁰ and (b) goods imported or to be exported by post.

Clearance of imported goods

Restrictions on custody and removal of imported goods.

45. (1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force,—

(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer.

Entry of goods on importation.

46. (1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) A bill of entry under sub-section (1) may be presented at any time after the delivery of the import manifest or import report as the case may be:

Provided that the Collector of Customs may in any special circumstances permit a bill of entry to be presented before the delivery of such manifest or report.

(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or *vice-versa*.

47. When the importer of any goods entered for home consumption has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer, if he is satisfied that the goods are not prohibited goods, may make an order permitting clearance of the goods for home consumption. Clearance of goods for home consumption.

48. If any imported goods are not cleared for home consumption or warehoused or transhipped within two months from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof: Procedure in case of goods not cleared, warehoused, or transhipped within two months after unloading.

Provided that—

(a) animals, perishable goods and hazardous goods may, with the permission of the proper officer, be sold at any time;

(b) arms, ammunition and military stores may be sold at such time and place and in such manner as the Central Government may direct.

49. Where in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Collector of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a public warehouse, or in a private warehouse if facilities for deposit in a public warehouse are not available; but such goods shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods. Storage of imported goods in warehouse pending clearance.

Clearance of export goods

Entry of
goods for
exportation.

50. (1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form. 5

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

Clearance of
goods for
exportation.

51. When the exporter of any goods has paid the export duty, if any, assessed thereon, and any charges payable under this Act in respect of the same, the proper officer, if he is satisfied that the goods are not prohibited goods, may make an order permitting clearance and loading of the goods for exportation. 10

CHAPTER VIII

GOODS IN TRANSIT

15

Chapter not
to apply to
baggage,
postal arti-
cles and
stores.

52. The provisions of this Chapter shall not apply to (a) baggage, (b) goods imported by post, and (c) stores.

Transit of
goods in
same vessel
or aircraft.

53. Subject to the provisions of section 11, any goods imported in a vessel or aircraft and mentioned in the import manifest as for transit in the same vessel or aircraft to any port or airport outside India or any customs port or customs airport may be allowed to be so transitted without payment of duty. 20

Transship-
ment of
goods with-
out payment
of duty.

54. (1) Where any goods imported into a customs port or customs airport are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form. 25

(2) Subject to the provisions of section 11—

(a) where any goods imported into a customs port are mentioned in the import manifest as for transshipment to any port outside India, or

(b) where any goods imported into a customs air-port are mentioned in the import manifest as for transshipment to any air-port outside India, 30

such goods may be allowed to be so transhipped without payment of duty.

(3) Where any goods imported into a customs port or a customs airport are mentioned in the import manifest as for transhipment—

15 of 1908.

(a) to any major port as defined in the Indian Ports Act, 1908, or the customs airport at Bombay, Calcutta, Delhi or Madras, or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or

(b) to any other customs port or customs airport, and the proper officer is satisfied that the goods are *bona fide* intended for transhipment to such customs port or airport,

the proper officer may allow the goods to be transhipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs port or customs airport to which transhipment is allowed.

55. Where any goods are allowed to be transitted under section 53 or transhipped under sub-section (3) of section 54 to any customs port or customs airport, they shall, on their arrival at such port or airport, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods.

Entry, etc., of transitted or transhipped goods on arrival at customs port or customs airport.

56. Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from one part of India to another part through any foreign territory, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination.

Transport of certain classes of goods subject to prescribed conditions.

CHAPTER IX

WAREHOUSING

57. At any warehousing station, the Assistant Collector of Customs may appoint public warehouses wherein dutiable goods may be deposited without payment of duty.

Appointing of public warehouses.

58. (1) At any warehousing station, the Assistant Collector of Customs may license private warehouses wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited without payment of duty.

Licensing of private warehouses.

(2) The Assistant Collector of Customs may cancel a licence granted under sub-section (1)—

(a) by giving one month's notice in writing to the licensee; or
(b) if the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the licence:

Provided that before any licence is cancelled under clause (b), the licensee shall be given a reasonable opportunity of being heard.

(3) Pending an enquiry whether a licence granted under sub-section (1) should be cancelled under clause (b) of sub-section (2), the Assistant Collector of Customs may suspend the licence. 5

Warehousing
bond.

59. (1) The importer of any dutiable goods which have been entered for warehousing and assessed to duty under section 17 or section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods,—

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods; 10

(b) to pay on or before a date specified in a notice of demand all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at the rate of six per cent. per annum or such other rate as is for the time being fixed by the Board; and 15

(c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.

(2) For the purposes of sub-section (1), the Assistant Collector of Customs may permit an importer to enter into a general bond in such amount as the Assistant Collector of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period. 20

(3) A bond executed under this section by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to another warehouse: 25

Provided that where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee. 30 35

Permission
for deposit
of goods in
a warehouse.

60. When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting the deposit of the goods in a warehouse without payment of duty.

Period for
which
goods may
remain
warehoused.

61. Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed, till the expiry of three years after the date on which the proper officer made an order under section 60 permitting the deposit of the goods in a warehouse: 40

Provided that—

(i) in the case of any goods which are likely to deteriorate, the aforesaid period of three years may be reduced by the Collector of Customs to such shorter period as he may deem fit;

5 (ii) in the case of any goods which are not likely to deteriorate, the aforesaid period of three years may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding one year and by the Board for such further period as it may deem fit:

10 Provided further that when the licence for any private warehouse is cancelled, the owner of any goods warehoused therein shall, within seven days from the date on which notice of such cancellation is given or within such extended period as the proper officer may allow, remove the goods from such warehouse to another ware-
15 house or clear them for home consumption or exportation.

62. (1) All warehoused goods shall be subject to the control of the proper officer. Control
over ware-
housed
goods,

(2) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.

20 (3) The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

(4) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

25 63. (1) The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Collector of Customs. Payment of
rent and
warehouse
charges.

30 (2) If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse-keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.

35 64. With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same— Owner's
right to
deal with
warehoused
goods.

(a) inspect the goods;

(b) separate damaged or deteriorated goods from the rest;

(c) sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;

(d) deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;

5

(e) show the goods for sale; or

(f) take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

Manufacture
and other
operations
in relation
to goods in
a warehouse.

65. (1) With the sanction of the Assistant Collector of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods. 10

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply:— 15

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported: 20

Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form; 25

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption. 30

Power to
exempt
imported
materials
used in the
manufacture
of goods in
warehouse.

66. If any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty. 35

67. The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, without payment of duty, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

Removal of goods from one warehouse to another.

68. The importer of any warehoused goods may clear them for home consumption if—

Clearance of warehoused goods for home consumption.

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

(b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer.

69. (1) Any warehoused goods may be exported to a place outside India without payment of import duty if—

Clearance of warehoused goods for exportation.

(a) a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form;

(b) the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for exportation has been made by the proper officer.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

70. (1) When any warehoused goods to which this section applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant Collector of Customs may remit the duty on such deficiency.

Allowance in case of volatile goods.

(2) This section applies to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may, by notification in the Official Gazette, specify.

71. No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or re-exportation, or for removal to another warehouse, or as otherwise provided by this Act.

Goods not to be taken out of warehouse except as provided by this Act.

Goods im-
properly
removed
from ware-
house, etc.

72. (1) In any of the following cases, that is to say,—

(a) where any warehoused goods are removed from a ware-
house in contravention of section 71;

(b) where any warehoused goods have not been removed
from a warehouse at the expiration of the period during which 5
such goods are permitted under section 61 to remain in a ware-
house;

(c) where any warehoused goods have been taken under sec-
tion 64 as samples without payment of duty;

(d) where any goods in respect of which a bond has been 10
executed under section 59 and which have not been cleared for
home consumption or exportation are not duly accounted for to
the satisfaction of the proper officer;

the proper officer may demand, and the owner of such goods shall
forthwith pay, the full amount of duty chargeable on account of such 15
goods together with all penalties, rent, interest and other charges
payable in respect of such goods.

(2) If any owner fails to pay any amount demanded under sub-
section (1), the proper officer may, without prejudice to any other
remedy, cause to be detained and sold, after notice to the owner (any 20
transfer of the goods notwithstanding) such sufficient portion of his
goods, if any, in the warehouse, as the said officer may select.

Cancellation
and return
of warehouse-
ing bond.

73. When the whole of the goods covered by any bond executed
under section 59 have been cleared for home consumption or exported
or are otherwise duly accounted for, and when all amounts due on 25
account of such goods have been paid, the proper officer shall cancel
the bond as discharged in full, and shall on demand deliver it, so
cancelled, to the person who has executed or is entitled to receive
it.

CHAPTER X

30

DRAWBACK

Drawback
allowable on
re-export of
duty-paid
goods.

74. (1) When any goods capable of being easily identified which
have been imported into India and upon which any duty has been
paid on importation, are exported to any place outside India, ninety-
five per cent. of such duty shall, except as otherwise hereinafter pro- 35
vided, be re-paid as drawback, if—

(a) the goods are identified to the satisfaction of the Assist-
ant Collector of Customs as the goods which were imported; and

(b) the goods are entered for export within two years from
the date of payment of duty on the importation thereof; 40

Provided that in any particular case the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.

(2) Notwithstanding anything contained in sub-section (1), the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government, having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette, fix.

(3) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may—

(a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;

(b) specify the goods which shall be deemed to be not capable of being easily identified.

(4) For the purposes of this section—

(a) goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16;

(b) in the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be the date of payment of duty.

75. (1) Where it appears to the Central Government that in respect of goods of any class or description manufactured in India and exported to any place outside India, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture of such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2).

(2) The Central Government may make rules for the purpose of carrying out the provisions of sub-section (1) and, in particular, such rules may provide—

(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture of the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture of goods of that class or description either by manufacturers generally or by any particular manufacturer;

(b) for the production of such certificates, documents and other evidence in support of each claim of drawback as may be necessary;

(c) for requiring the manufacturer to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Collector of Customs to enable such authorised officer to inspect the processes of manufacture and to verify by actual check or otherwise the statements made in support of the claim for drawback.

Prohibition and regulation of drawback in certain cases.

76. (1) Notwithstanding anything hereinbefore contained, no drawback shall be allowed—

(a) in respect of any goods which are required under the regulations to be included in the export manifest or export report and are not so included;

(b) in respect of any goods the market-price of which is less than the amount of drawback due thereon;

(c) where the drawback due in respect of any goods is less than five rupees.

(2) Without prejudice to the provisions of sub-section (1), if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

CHAPTER XI

SPECIAL PROVISIONS REGARDING BAGGAGE, GOODS IMPORTED OR EXPORTED BY POST, AND STORES

Baggage

Declaration by owner of baggage.

77. The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

Determination of rate of duty and tariff valuation in respect of baggage.

78. The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under section 77.

Bona fide baggage exempted from duty.

79. (1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty—

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a *bona fide* gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

(2) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may specify—

(a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);

(b) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of sub-section (1);

(c) the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed free of duty.

(3) Different rules may be made under sub-section (2) for different classes of persons.

80. Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India.

Temporary detention of baggage.

81. The Board may make regulations,—

Regulations in respect of baggage.

(a) providing for the manner of declaring the contents of any baggage;

(b) providing for the custody, examination, assessment to duty and clearance of baggage;

(c) providing for the transit or transhipment of baggage from one customs station to another or to a place outside India.

Goods imported or exported by post

82. In the case of goods imported or exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, shall be deemed to be an entry for import or export, as the case may be, for the purposes of this Act.

Label or declaration accompanying goods to be treated as entry.

83. (1) The rate of duty and tariff-value, if any, applicable to any goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon:

Rate of duty and tariff valuation in respect of goods imported or exported by post.

Provided that if such goods are imported by a vessel and the list of the goods containing the particulars was presented before the date of the arrival of the vessel, it shall be deemed to have been presented on the date of such arrival.

(2) The rate of duty and tariff value, if any, applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation.

Regulations regarding goods imported or to be exported by post.

84. The Board may make regulations providing for—

(a) the form and manner in which an entry may be made in respect of any specified class of goods imported or to be exported by post, other than goods which are accompanied by a label or declaration containing the description, quantity and value thereof;

(b) the examination, assessment to duty, and clearance of goods imported or to be exported by post; 15

(c) the transit or transshipment of goods imported by post, from one customs station to another or to a place outside India.

Stores

Stores may be allowed to be warehoused without assessment to duty.

85. Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty under this Chapter, the proper officer may permit the goods to be warehoused without the goods being assessed to duty. 20

Transit and transshipment of stores.

86. (1) Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India. 25

(2) Any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided in section 87 or section 90. 30

Imported stores may be consumed on board a foreign-going vessel or aircraft.

87. Any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft.

Application of section 69 and Chapter X to stores.

88. The provisions of section 69 and Chapter X shall apply to stores (other than those to which section 90 applies) as they apply to other goods, subject to the modification that for the words "exported to any place outside India" or the word "exported" wherever they occur, the words "taken on board any foreign-going vessel or aircraft as stores" shall be substituted. 40

89. Goods produced or manufactured in India and required as Stores to be
stores on any foreign-going vessel or aircraft may be exported free of free of ex-
duty in such quantities as the proper officer may determine, having port duty.
regard to the size of the vessel or aircraft, the number of passengers
5 and crew and the length of the voyage or journey on which the vessel
or aircraft is about to depart.

90. (1) Imported stores specified in sub-section (3) may without Concessions
payment of duty be consumed on board a ship of the Indian Navy. in respect of
imported
stores for
the Navy.

(2) The provisions of section 69 and Chapter X shall apply to
10 stores specified in sub-section (3) as they apply to other goods, subject
to the modifications that—

(a) for the words "exported to any place outside India" or
the word "exported" wherever they occur, the words "taken on
board a ship of the Indian Navy" shall be substituted;

15 (b) for the words "ninety-five per cent." in sub-section (1)
of section 74, the words "the whole" shall be substituted.

(3) The stores referred to in sub-sections (1) and (2) are the
following:—

(a) stores for the use of a ship of the Indian Navy;

20 (b) stores supplied free by the Government for the use of the
crew of a ship of the Indian Navy in accordance with their
conditions of service.

CHAPTER XII

25 PROVISIONS RELATING TO COASTAL GOODS AND VESSELS CARRYING COASTAL GOODS

91. The provisions of this Chapter shall not apply to baggage and Chapter not
stores. to apply to
baggage and
stores.

92. (1) The consignor of any coastal goods shall make an entry Entry of
thereof by presenting to the proper officer a bill of coastal goods in coastal
30 the prescribed form. goods.

(2) Every such consignor while presenting a bill of coastal goods
shall, at the foot thereof, make and subscribe to a declaration as to
the truth of the contents of such bill.

93. The master of a vessel shall not permit the loading of any Coastal
35 coastal goods on the vessel until a bill relating to such goods pre- goods not to
sented under section 92 has been passed by the proper officer and be loaded
until bill re-
lating thereto
has been delivered to the master by the consignor. is passed,
etc.

Clearance of coastal goods at destination.

94. (1) The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that port.

(2) Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him under sub-section (1).

10

Master of a coasting vessel to carry an advice book.

95. (1) The master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book to be called the "advice book".

(2) The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port.

(3) The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection.

Loading and unloading of coastal goods at customs port or coastal port only.

96. No coastal goods shall be loaded on, or unloaded from, any vessel at any port other than a customs port or a coastal port appointed under section 7 for the loading or unloading of such goods.

No coasting vessel to leave without written order.

97. (1) The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer.

(2) No such order shall be given until—

(a) the master of the vessel has answered the questions put to him under section 38;

(b) all charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;

(c) the master of the vessel has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with.

40

98. (1) Sections 33, 34 and 36 shall, so far as may be, apply to coastal goods as they apply to imported goods or export goods.

Application of certain provisions of this Act to coastal goods, etc.

(2) Sections 37 and 38 shall, so far as may be, apply to vessels carrying coastal goods as they apply to vessels carrying imported goods or export goods.

(3) The Central Government may, by notification in the Official Gazette, direct that all or any of the other provisions of Chapter VI and the provisions of section 45 shall apply to coastal goods or vessels carrying coastal goods subject to such exceptions and modifications as may be specified in the notification.

99. The Central Government may make rules for—

(a) preventing the taking out of India of any coastal goods the export of which is dutiable or prohibited under this Act or any other law for the time being in force;

Power to make rules in respect of coastal goods and coasting vessels.

(b) preventing, in the case of a vessel carrying coastal goods as well as imported or export goods, the substitution of imported or export goods by coastal goods.

CHAPTER XIII

SEARCHES, SEIZURE AND ARREST

100. (1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person.

Power to search suspected persons entering or leaving India, etc.

(2) This section applies to the following persons, namely:—

(a) any person who has landed from or is about to board or is on board any vessel within the Indian customs waters;

(b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;

(c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;

(d) any person not included in clause (a), (b) or (c) who has entered or is about to leave India;

(e) any person in a customs area.

101. (1) Without prejudice to the provisions of section 100, if an officer of customs empowered in this behalf by general or special order of the Collector of Customs, has reason to believe that any person has secreted about his person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person.

Power to search suspected persons in certain other cases.

(2) The goods referred to in sub-section (1) are the following:—

(a) gold;

(b) manufactures of gold or precious stones;

(c) precious stones;

(d) watches;

5

(e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

Persons to be searched may require to be taken before Gazetted Officer of Customs or magistrate.

102. (1) When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him to the nearest 10
Gazetted Officer of Customs or magistrate.

(2) If such requisition is made, the officer of customs may detain the person making it until he can bring him before the Gazetted Officer of Customs or the magistrate.

(3) The Gazetted Officer of Customs or the magistrate before 15
whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) A female shall not be searched by any one excepting a female.

Power to screen or X-ray bodies of suspected persons for detecting secreted goods.

103. (1) Where the proper officer has reason to believe that any 20
person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate.

(2) A magistrate before whom any person is brought under sub- 25
section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

(3) Where any such magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and 30
the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.

(4) Where a magistrate has made any order under sub-section
(3), in relation to any person, the proper officer shall as soon as 35

practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or X-ray his body.

5 (5) A radiologist before whom any person is brought under sub-section (4) shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him, to the magistrate without unnecessary delay.

10 (6) Where on receipt of a report from a radiologist under sub-section (5) or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction:

15 Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.

(7) Where any person is brought before a magistrate under this section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such period as he may direct.

(8) Nothing in this section shall apply to any person referred to in sub-section (1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods.

Explanation.—For the purposes of this section, the expression “registered medical practitioner” means any person who holds a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916, or notified under section 3 of that Act, or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1956.

7 of 1916.

102 of 1956.

104. (1) If an officer of customs empowered in this behalf by general or special order of the Collector of Customs has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under section 135, he may arrest such person and shall, as soon as may be, inform him of the grounds of such arrest. Power to arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

40 (3) The magistrate before whom such person is taken may, if he thinks fit, either commit him to jail or order him to be kept in such custody as the magistrate may deem fit, pending investigation by officers of customs;

Provided that when any such person is prepared to give bail, he shall be released on bail in accordance with the provisions of the Code of Criminal Procedure, 1898.

5 of 1898.

Power to
search pre-
mises.

105. (1) If the Assistant Collector of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.

(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches shall, so far as may be, apply to searches under this section.

5 of 1898.

Power to
stop and
search con-
veyances.

106. (1) Where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and—

20

(a) rummage and search any part of the aircraft, vehicle or vessel;

(b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;

(c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

(2) Where for the purposes of sub-section (1)—

(a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and thereupon such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;

(b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

40

107. Any officer of customs empowered in this behalf by general or special order of the Collector of Customs may, during the course of any enquiry in connection with the smuggling of any goods,—

Power to examine persons.

5 (a) require any person to produce or deliver any document or thing relevant to the enquiry;

(b) examine orally any person acquainted with the facts and circumstances of the case;

10 (c) require any person referred to in clause (b) to make a statement in writing in connection with such enquiry and to sign such statement.

108. (1) Any officer of customs empowered in this behalf by general or special order of the Collector of Customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.

Power to summon persons to give evidence and produce documents.

20 (2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

25 (3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:

3 of 1903. Provided that the exemption under section 132 of the Code of Civil Procedure, 1908, shall be applicable to any requisition for attendance under this section.

45 of 1860. (4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

109. Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under section 47 permitting clearance of the goods:

Power to require production of order permitting clearance of goods imported by land.

40 Provided that nothing in this section shall apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of section 7.

Seizure of
goods, do-
cuments and
things.

110. (1) If any officer of customs has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the officer of customs may serve on the owner of the goods an order⁵ that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of the officer of customs.

(2) Any officer of customs may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act. 10

CHAPTER XIV

CONFISCATION OF GOODS AND CONVEYANCES AND IMPOSITION OF PENALTIES

Confiscation
of improper-
ly imported
goods, etc.

111. The following goods brought from a place outside India shall be liable to confiscation:—

(a) any goods imported by sea or air which are unloaded or¹⁵ attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under²⁰ clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be import-²⁵ ed or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance; 30

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32,³⁵ other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34; 40

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

5 (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

10 (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

15 (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

20 (m) any dutiable or prohibited goods which do not correspond in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof;

(n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;

25 (o) any goods exempted, subject to any condition, from duty the export of which is dutiable or prohibited under this Act or or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

112. Any person,—

30 (a) who, knowing or having reason to believe that any other person is intending to smuggle any goods into India, gives that

Penalty for improper importation of goods, etc.

other person financial or other assistance for smuggling such goods, or

(b) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or

(c) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing or selling, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods or one thousand rupees, whichever is the greater; 15

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding three times the duty sought to be evaded on such goods or one thousand rupees, whichever is the greater.

Confiscation
of goods
attempted
to be im-
properly
exported,
etc.

113. The following export goods shall be liable to confiscation:— 20

(a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;

(b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the export of such goods; 25

(c) any dutiable or prohibited goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land-customs station or a customs port appointed for the loading of such goods; 30

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force; 35

(e) any dutiable or prohibited goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

(f) any dutiable or prohibited goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34; 40

5 (g) any dutiable or prohibited goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be waterborne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;

(h) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

10 (i) any dutiable or prohibited goods which do not correspond in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof;

15 (j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74;

(k) any goods cleared for exportation under a claim for drawback which are not exported except on account of lack of space in the conveyance by which they were to be exported.

20 114. Any person,—

(a) who, knowing or having reason to believe that any other person intends to smuggle any goods out of India gives that other person financial or other assistance for smuggling such goods; or

Penalty for attempt to export goods improperly, etc.

25 (b) who, in relation to any goods, does or omits to do any act which act or omission will render such goods liable to confiscation under section 113;

shall be liable,—

30 (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods or one thousand rupees, whichever is the greater;

35 (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding three times the duty sought to be evaded on such goods or one thousand rupees, whichever is the greater;

(iii) in the case of goods under claim for drawback, to a penalty not exceeding three times the amount of drawback claimed or one thousand rupees, whichever is the greater.

Confiscation
of convey-
ances.

115. (1) The following conveyances shall be liable to confiscation:—

(a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area,

while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;

(b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;

(c) any conveyance which having been required to stop or land under section 106 fails to do so, except for good and sufficient cause;

(d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all such precautions against such use as are for the time being specified in the rules:

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

Explanation.—In this section, "market price" means market price at the date when the goods are seized.

Penalty for
not account-
ing for
goods.

116. If any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance, are not unloaded at their

place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Collector of Customs, the person-in-charge of the
5 conveyance shall be liable,—

(a) in the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of this Act, to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been
10 imported;

(b) in the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the
15 case may be, had such goods been exported.

117. Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or
20 failure, shall be liable to a penalty not exceeding one thousand rupees.

Penalties for contravention, etc., not expressly mentioned.

118. Where any smuggled goods are contained in a package, the package and any other goods contained therein shall also be liable to confiscation.

Confiscation of packages and their contents.

25 119. Any goods used for concealing smuggled goods shall also be liable to confiscation.

Confiscation of goods used for concealing smuggled goods.

Explanation.—In this section, “goods” does not include a conveyance used as a means of transport.

120. (1) Smuggled goods may be confiscated notwithstanding any
30 change in their form.

Confiscation of smuggled goods notwithstanding any change in form, etc.

(2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation:

35 Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, such part of the goods as is proved by him to have not been smuggled, shall not be liable to confiscation.

121. Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods,
40 the sale-proceeds thereof shall be liable to confiscation.

Confiscation of sale-proceeds of smuggled goods.

Adjudication
of confisca-
tions and
penalties.

122. In every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged,—

(a) without limit, by a Collector of Customs or a Deputy Collector of Customs; 5

(b) where the value of the goods liable to confiscation does not exceed ten thousand rupees and where the penalty proposed to be imposed does not exceed two thousand rupees, by an Assistant Collector of Customs;

(c) where the value of the goods liable to confiscation does not exceed one thousand rupees and where the penalty proposed to be imposed does not exceed two hundred rupees, by a gazetted officer of customs lower in rank than an Assistant Collector of Customs.

Burden of
proof in
certain cases.

123. (1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized. 15

(2) This section shall apply to gold, manufactures of gold and precious stones, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify. 20

Issue of
show-cause
notice
before con-
fiscation of
goods, etc.

124. No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person— 25

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral. 35

125. (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Option to pay fine in lieu of confiscation.

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) For the removal of doubts it is hereby declared that any fine in lieu of confiscation of goods imposed under sub-section (1) shall not affect the duty payable on such goods.

126. (1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

On confiscation, property to vest in Central Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods.

127. The award of any confiscation or penalty under this Act by an officer of customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chapter XVI of this Act or under any other law.

Award of confiscation or penalty by customs officers not to interfere with other punishments.

CHAPTER XV

APPEALS AND REVISION

128. (1) Any person aggrieved by any decision or order passed under this Act may, within three months from the date of the communication to him of such decision or order—

Appeals.

(a) where the decision or order has been passed by a Collector of Customs, appeal to the Board;

(b) where the decision or order has been passed by a Deputy Collector or Assistant Collector of Customs, appeal to the Collector of Customs;

(c) where the decision or order has been passed by an officer of customs lower in rank than Assistant Collector of Customs, appeal to the Deputy Collector of Customs, or if there is no Deputy Collector of Customs, to the Collector of Customs;

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(2) The Appellate Authority may, after giving an opportunity to the appellant to be heard, if he so desires, and making such further inquiry as may be necessary, pass such order as it thinks fit, confirming, modifying or annulling the decision or order appealed against:

Provided that no order enhancing any duty or penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of opinion that any duty of customs has been short-levied, no order enhancing the duty shall, except where the case falls under the proviso to subsection (1) of section 28 be passed unless the appellant is given notice within the time-limit specified in that section to show cause against the proposed order.

Deposit,
pending
appeal, of
duty de-
manded or
penalty
levied.

129. (1) Where the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of customs authorities or any penalty levied under this Act, any person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty demanded or the penalty levied:

Provided that where in any particular case the appellate authority is of opinion that the deposit of duty demanded or penalty levied will cause undue hardship to the appellant, it may in its discretion dispense with such deposit, either unconditionally or subject to such conditions as it may deem fit.

(2) If upon any such appeal it is decided that the whole or any portion of such duty or penalty was not leviable, the proper officer shall return to the appellant such amount of duty or penalty as was not leviable.

Powers of
revision of
Board and
Collector of
Customs.

130. (1) The Board may of its own motion or on the application of any aggrieved person call for and examine the record of any proceeding in which an officer of customs has passed any decision or order under this Act (not being an order passed in appeal under section 128) for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may pass such order thereon as it thinks fit:

Provided that no order levying any duty or enhancing any duty or penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section unless the person affected by the proposed order has been given a reasonable opportunity of showing cause against it:

Provided further that where the Board is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall, except where the case falls under the proviso to sub-section (1) of section 26, be made unless the person affected by the proposed order is given notice to show cause against it within the time-limit specified in that section.

(2) The power conferred upon the Board under sub-section (1) may also, in the like manner and subject to the like conditions, be exercised by the Collector of Customs in respect of any decision or order passed under this Act (not being an order passed in appeal under section 128) by an officer of customs subordinate to him.

(3) No decision or order passed by an officer of customs shall be revised under this section by the Board or the Collector of Customs of its or his own motion, and no application for the revision of any such decision or order shall be entertained, after the expiry of two years from the date of such decision or order.

131. (1) The Central Government may, on the application of any person aggrieved by—

Revision by
Central
Government.

(a) any order passed under section 128, or

(b) any order passed by the Board or the Collector of Customs of its or his own motion under section 130, or

(c) any order passed on the application of any aggrieved person under section 130 where the order is of the nature referred to in the first proviso to sub-section (1) of that section,

annul or modify such order:

Provided that no order enhancing any duty or penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section.

(2) An application under sub-section (1) shall be made within six months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of six months, allow it to be presented within a further period of six months.

CHAPTER XVI

OFFENCES AND PROSECUTIONS

132. Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any

False
declaration,
false docu-
ments, etc.

material particular, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Obstruction
of officer
of customs.

133. If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both. 5

Refusal to
be X-rayed.

134. If any person—

(a) resists or refuses to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a magistrate under section 103, or 10

(b) resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body;

he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both. 15

Evasion of
duty or
prohibitions.

135. Without prejudice to any other action that may be taken under this Act, if any person—

(a) knowingly and with intent to defraud the Government of any duty payable on any goods or to evade any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to any goods acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing or selling or in any manner dealing with, such goods; or 25

(b) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any such prohibition as aforesaid;

he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. 30

Offences by
officers of
customs.

136. (1) If any officer of customs enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any duty of customs leviable on any goods, or any prohibition for the time being in force under this Act or any other law for the time being in force with respect to any goods is or may be evaded, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. 35

(2) If any officer of customs,—

(a) requires any person to be searched for goods liable to confiscation or any document relating thereto, without having

reason to believe that he has such goods or document secreted about his person; or

(b) arrests any person without having reason to believe that he has been guilty of an offence punishable under section 135,
5 he shall be punishable with fine which may extend to one thousand rupees.

(3) If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars
10 learnt by him in his official capacity in respect of any goods, he shall be punishable with fine which may extend to one thousand rupees.

137. (1) No Court shall take cognizance of any offence under section 132, section 133, section 134 or section 135, except with the
15 previous sanction of the Collector of Customs. Cognizance of offences.

(2) No Court shall take cognizance of any offence under section 136,—

(a) where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Collector of Customs, except with the previous sanction of the Central
20 Government;

(b) where the offence is alleged to have been committed by an officer of customs lower in rank than Assistant Collector of Customs, except with the previous sanction of the Collector of
25 Customs.

5 of 1898. 138. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Chapter may be tried summarily by a magistrate. Offences to be tried summarily.

139. Where any document is furnished by any person under this
30 Act or has been seized under this Act from the custody or control of any person, and such document is tendered by the prosecution in evidence against him, the Court shall,— Presumption as to documents in certain cases.

(a) unless the contrary is proved by any such person, presume—

35 (i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any
40 particular person, is in that person's handwriting, and in the case of a document executed or attested that it was executed

or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

5

Offences by companies.

140. (1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: 10

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence. 15

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 20

Explanation.—For the purposes of this section,—

25

(a) “company” means a body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER XVII

30

MISCELLANEOUS

Conveyances and goods in a customs area subject to control of officers of customs.

141. All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of customs.

Recovery of sums due to Government.

142. Where any duty demanded from any person or any penalty payable by any person under this Act is not paid,— 35

(a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs; or 40

(b) the Assistant Collector of Customs may recover or may require any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Collector of Customs or such other officer of customs; or

(c) if the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b), the Assistant Collector of Customs may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from the said person the amount specified thereunder as if it were an arrear of land revenue.

143. (1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Collector of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Collector of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Collector of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

Power to allow import or export on execution of bonds in certain cases.

(2) If the thing is done within the time specified in the bond, the Assistant Collector of Customs shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the Assistant Collector of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

144. (1) The proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.

Power to take samples.

(2) After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, if a request in that behalf was made at the time the sample was taken, or failing such a request be disposed of in such manner as the Collector of Customs may direct.

5

Owner to perform operations incidental to compliance with customs law.

145. All operations necessary for making any goods available for examination by the proper officer or for facilitating such examination shall be performed by, or at the expense of, the owner of the goods.

Custom house agents to be licensed.

146. (1) No person shall carry on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs-station unless such person holds a licence granted in this behalf in accordance with the regulations.

(2) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may provide for—

(a) the authority by which a licence may be granted under this section and the period of validity of any such licence;

(b) the form of the licence and the fees payable therefor;

(c) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in his work as an agent;

(d) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted;

25

(e) the circumstances in which a licence may be suspended or revoked; and

(f) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeals shall be filed.

30

Liability of principal and agent.

147. (1) Where this Act requires anything to be done by the owner, importer or exporter of any goods, it may be done on his behalf by his agent.

(2) Any such thing done by an agent of the owner, importer or exporter of any goods shall be deemed to have been done with the knowledge and consent of such owner, importer or exporter, so that in any proceedings under this Act, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself.

(3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or
5 exporter, be deemed to be the owner, importer or exporter of such goods for such purposes.

148. (1) Where this Act requires anything to be done by the person in charge of a conveyance, it may be done on his behalf by his agent.

Liability of agent appointed by the person in charge of a conveyance.

10 (2) An agent appointed by the person in charge of a conveyance and any person who represents himself to any officer of customs as an agent of any such person in charge, and is accepted as such by that officer, shall be liable for the fulfilment in respect of the matter in question of all obligations imposed on such person in charge by or
15 under this Act or any law for the time being in force, and to penalties and confiscations which may be incurred in respect of that matter.

149. Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the customs house to be amended:

Amendment of documents.

20 Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the
25 time the goods were cleared, deposited or exported, as the case may be.

150. (1) Where any goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any
30 other manner.

Procedure for sale of goods and application of sale-proceeds.

(2) The proceeds of any such sale shall be applied—

- (a) firstly to the payment of the expenses of the sale,
(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice
35 of such charges has been given to the person having custody of the goods,
(c) next to the payment of the duty, if any, on the goods sold,
(d) next to the payment of the charges in respect of the
40 goods sold due to the person having the custody of the goods,
(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs,
and the balance, if any, shall be paid to the owner of the goods.

Certain
officers re-
quired to
assist officers
of customs.

151. The following officers are hereby empowered and required to assist officers of customs in the execution of this Act, namely:—

- (a) officers of the Central Excise Department;
- (b) officers of the Navy;
- (c) officers of Police;
- (d) officers of the Central or State Governments employed at any port or airport;

(e) such other officers of the Central or State Government or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

5

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Delegation
of powers.

152. The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification—

(a) any power exercisable by the Board under this Act shall be exercisable also by a Collector of Customs empowered in this behalf by the Central Government;

15

(b) any power exercisable by a Collector of Customs under this Act may be exercisable also by a Deputy Collector of Customs or an Assistant Collector of Customs empowered in this behalf by the Central Government;

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(c) any power exercisable by a Deputy Collector of Customs under this Act may be exercisable also by an Assistant Collector of Customs empowered in this behalf by the Central Government;

(d) any power exercisable by an Assistant Collector of Customs under this Act may be exercisable also by a Gazetted officer of customs empowered in this behalf by the Board.

25

Service of
order, de-
cision, etc.

153. Any order or decision passed or any summons or notice issued under this Act, shall be served—

(a) by tendering the order, decision, summons or notice or sending it by post to the person for whom it is intended or to his agent; or

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(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

Correction
of clerical
errors, etc.

154. Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.

40

155. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

Protection
of action
taken under
the Act.

5 (2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the
10 cause thereof, or after the expiration of three months from the accrual of such cause.

156. (1) Without prejudice to any power to make rules contained elsewhere in this Act, the Central Government may make rules
15 consistent with this Act generally to carry out the purposes of this Act.

General
power to
make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

20 (a) the manner of determining the nearest ascertainable equivalent of the normal price of any goods;

(b) the conditions subject to which accessories of, and spare parts and maintenance and repairing implements for, any article shall be chargeable at the same rate of duty as that article;

25 (c) the precautions that shall be taken by the owner, his agent and the person-in-charge of any conveyance or animal for the purposes of sub-section (2) of section 115;

30 (d) the detention and confiscation of goods the importation of which is prohibited and the conditions, if any, to be fulfilled before such detention and confiscation and the information, notices and security to be given and the evidence requisite for the purposes of such detention or confiscation and the mode of verification of such evidence;

35 (e) the reimbursement by an informant to any public officer of all expenses and damages incurred in respect of any detention of any goods made on his information and of any proceedings consequent on such detention;

40 (f) the information required in respect of any goods mentioned in a shipping bill or bill of export which are not exported or which are exported and are afterwards re-landed.

157. (1) Without prejudice to any power to make regulations contained elsewhere in this Act, the Board may make regulations
40 consistent with this Act and the rules, generally to carry out the purposes of this Act.

General
powers to
make re-
gulations.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :—

(a) the form of a bill of entry, shipping bill, bill of export, import manifest, import report, export manifest, export report, bill of transshipment, boat note and bill of coastal goods;

(b) the conditions subject to which the transshipment of all or any goods under sub-section (3) of section 54, the transportation of all or any goods under section 56 and the removal of warehoused goods from one warehouse to another under section 67 may be allowed without payment of duty;

(c) the conditions subject to which any manufacturing process or other operations may be carried on in a warehouse under section 65.

Provisions
with respect
to rules
and regula-
tions.

158. (1) All rules and regulations made under this Act shall be published in the Official Gazette.

(2) Any rule or regulation which the Central Government or the Board is empowered to make under this Act may provide—

(i) for the levy of fees in respect of applications, amendment of documents, furnishing of duplicates of documents, issue of certificates, and supply of statistics, and for rendering of any services by officers of customs under this Act;

(ii) that any person who contravenes any provision of a rule or regulation or abets such contravention or any person who fails to comply with any provision of a rule or regulation which it was his duty to comply, shall be liable,—

(a) in the case of contravention or failure to comply with a rule, to a penalty which may extend to five hundred rupees;

(b) in the case of contravention or failure to comply with a regulation, to a penalty which may extend to two hundred rupees.

Rules and
certain noti-
fications to
be laid
before Par-
liament.

159. Every rule made under this Act and every notification issued under sections 11, 14, 25, 66, 69, 70, 74, 75, 76, 98, 101 and 123 shall be laid as soon as may be after it is made or issued before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no

effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

160. (1) The enactments specified in the Schedule are hereby Repeal and savings.
5 repealed to the extent mentioned in the fourth column thereof.

32 of 1934.

(2) In the Indian Tariff Act, 1934—

(a) for section 2, the following section shall be substituted, namely:—

10 “2. The rates at which duties of customs shall be levied Duties specified in the Schedules to be levied.
under the Customs Act, 1962, are specified in the First and
Second Schedules.”;

(b) sections 5 and 6 shall stand repealed.

(3) Notwithstanding the repeal of any enactment by this section,—

15 (a) any notification, rule, regulation, order or notice issued
or any appointment or declaration made or any licence, permis-
sion or exemption granted or any assessment made, confiscation
adjudged or any duty levied or any penalty or fine imposed or
any forfeiture, cancellation or discharge of any bond ordered or
20 any other thing done or any other action taken under any repeal-
ed enactment shall, so far as it is not inconsistent with the
provisions of this Act, be deemed to have been done or taken
under the corresponding provision aforesaid;

25 (b) any document referring to any enactment hereby
repealed shall be construed as referring to this Act or to the
corresponding provision of this Act.

(4) This Act shall apply to all goods which are subject to the control of customs at the commencement of this Act notwithstanding that the goods were imported before such commencement.

30 (5) Where the period prescribed for any application, appeal, revision or other proceeding under any repealed enactment had expired on or before the commencement of this Act, nothing in this Act shall be construed as enabling any such application, appeal or revision to be made or a proceeding to be instituted under this Act by reason only of the fact that a longer period therefor is prescribed or provision is made for extension of time in suitable cases by the appropriate
35 authority.

(6) The provisions of section 65 shall apply to goods warehoused before the commencement of this Act if the operations permissible under that section were carried on after such commencement.

(7) Any duty or penalty payable under any repealed enactment may be recovered in a manner provided under this Act but without prejudice to any action already taken for the recovery of such duty or penalty under the repealed Act.

(8) The mention of particular matters in sub-sections (4), (5), (6) 5 and (7) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect 10 of 1897. of repeals.

(9) Nothing in this Act shall affect any law for the time being in force relating to the constitution and powers of any Port authority 10 in a major port as defined in the Indian Ports Act, 1908. 15 of 1908.

Removal of difficulties.

161. If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments repealed by this Act to the provisions of this Act, the Central Government may, by general or special order, do anything not inconsis- 15 tent with such provisions which appears to be necessary or expedient for the purpose of removing the difficulty.

THE SCHEDULE

(See section 160)

REPEALS

	Year	No.	Short title	Extent of repeal
5	1	2	3	4
	1878	8	The Sea Customs Act .	The whole
	1896	8	The Inland Bonded Ware- houses Act	The whole
	1924 .	19	The Land Customs Act .	The whole
10	1934	22	The Aircraft Act	Section 16.

STATEMENT OF OBJECTS AND REASONS

The Sea Customs Act which lays down the basic law relating to customs was enacted more than 80 years ago. It has been amended from time to time and some important amendments were made by the Sea Customs (Amendment) Act, 1955. General and comprehensive revision of the Act has not so far been undertaken. Several provisions of the Act have become obsolete. Difficulties have also been experienced in the implementation of certain other provisions. The trade has been pressing for certain changes and facilities. Smuggling, consequent to controlled economy, has presented new problems. To meet these requirements, it has become necessary to revise the Act.

The Land Customs Act was passed in 1924. It is not a self-contained Act and applies by reference provisions of the Sea Customs Act to land customs with certain modifications. There is no separate law relating to air customs, and the administration of air customs is governed by certain rules made under the Indian Aircraft Act, 1911. While revising the Sea Customs Act, it is proposed to consolidate the provisions relating to sea customs, land customs and air customs into one comprehensive measure.

The Notes on Clauses explain in detail all the changes which are proposed to be introduced in the new law as compared with the existing law.

NEW DELHI;
The 8th June, 1962.

MORARJI R. DESAI.

Notes on Clauses

Clause 2.—A number of new definitions of certain terms which are used in the new law have been added.

Clause 3.—This is a new provision which specifies the classes of officers of Customs. The existing statutory designation of "Chief Customs Officer" and the "Customs Collector" are being replaced by the actual designation of the officers.

Clause 4.—Sub-clause (1) corresponds to first para. of existing section 6. Sub-clause (2) is a new provision which empowers the Central Government to delegate to the Board and the superior officers of Customs the powers to appoint subordinate officers.

Clause 5.—Sub-clause (1) corresponds to second para. of existing section 6 and existing section 9(a). Sub-clause (2) is a new provision and will enable officers of Customs to perform the functions of their subordinates whenever necessary.

Clause 6 replaces existing section 8 under which the powers of officers of Customs at places where there is no Custom House are exercised by the land revenue officers of the district. This is no longer necessary because Central Excise Officers are available all over the country. Further, powers of Customs Officers have sometimes to be conferred on other officers, like Police Officers. The proposed clause, therefore, makes a general provision empowering the Central Government to entrust functions of an officer of Customs to any officer of the Central or a State Government or a local Authority.

Clause 7.—Clause (a) corresponds to existing section 11(a). The Sub-clause as revised provides for a Customs Port being appointed for the loading and unloading of only a class of imported goods or goods to be exported. Further, the phrase "customs-port" will no longer apply to ports which handle coastal goods only. Sub-clauses (b) and (c) correspond to section 4 of the Land Customs Act, 1924. Clause (d) corresponds to existing section 12.

Clause 8 corresponds to existing section 11(c) and 11(f). The power to approve landing places etc. will now be exercised by the Collector of Customs instead of by the Board.

Clause 9 corresponds to existing section 14. The new clause will permit the establishment of warehouses in the interior and at land-customs stations. This will enable the Department to give warehousing facilities in the interior and also in respect of goods imported by land.

Clause 10 corresponds to existing section 17. The latter part of the existing section regarding the appointment of places at which vessels may be anchored is being deleted as that power is conferred on Port authorities under the Indian Ports Act, 1908.

Clause 11 replaces existing sections 18 and 19. The existing section 19 does not specify any guiding principles, for prohibiting the import or export of goods. The purposes for which the import or export of goods may be prohibited have now been specified in sub-clause (2) on the lines of the General Agreement on Trade and Tariff to which India is a signatory. Items (r), (s) and (t) though not specifically provided in GATT are nonetheless permitted by GATT. A residuary provision has, however, been added to meet unforeseen exigencies.

Clause 12.—Goods imported or exported by land are at present not liable to duty unless they are imported from or exported to a territory which is declared a foreign territory by a notification issued under Section 5 of the Indian Tariff Act, 1934. In that case duty becomes leviable in respect of such commodities as are specified in the notification. Basically there is no difference between imports by land or by sea. Customs duties are imposed on the products of foreign countries and the means by which the goods are imported are not really relevant. It is, therefore, proposed to provide that imports and exports by land would automatically attract customs duty.

This clause replaces section 20 of the Sea Customs Act, 1878, with the following amendments:—

(i) Goods imported into or exported from a place other than a customs-port which are at present not dutiable would become liable to duty.

(ii) Clause (b) of the existing section under which opium, salt or salted fish carried coast-wise is dutiable, is being deleted. The provisions in Section 2(4) and Section 6 of the Indian Tariff Act, 1934 for levy of duty on opium, salt or motor spirit carried coast-wise is also being omitted. The power to levy differential duty on goods manufactured or produced in another State is conferred under the Constitution on the State Governments.

(iii) Sub-section (2) is being amended. The liability to customs duty of goods belonging to the Central Government which is implied at present is being specifically provided.

Clause 13.—This is a new provision which makes the importer liable to pay duty on goods which are pilfered before clearance.

Under the existing Act, an importer can abandon an entire consignment even though it may have been pilfered in which case he is not liable to pay duty.

Clause 14(1) replaces existing section 30. Clause (a) of the existing section regarding determination of assessable value of goods on the basis of their wholesale price in India is being deleted as it does not conform to the provisions of GATT, to which India is a signatory. This has been one of the persistent demands of importers. Clause (b) of the existing section has been re-drafted to conform to the principles enunciated in GATT. It is being specifically provided that the assessable value shall be based on transactions in which the seller and the buyer have no interest in the business of each other and price is the sole consideration. It has also been provided on the lines of GATT that where the normal price in independent transactions is not ascertainable, the nearest equivalent of such price, as may be determined in accordance with the Rules to be made by the Central Government, will be the assessable value.

Clause 14(2) corresponds to existing section 22, and specifies in addition the guiding principle for fixing tariff values. At present tariff values are fixed on the basis of real value as defined in Section 30(a). Since that Sub-section is being omitted the basis for fixing tariff value is also being changed so as to be in conformity with the revised definition of value.

Clause 15 corresponds to existing section 37. A residuary clause (c) has been added, according to which the date for determining the rate of duty in the case of goods not cleared in accordance with the normal procedure shall be the date of payment of duty.

Clause 16 corresponds to existing section 38. Instead of the existing first proviso which fixes the date for determining duty where the export of any goods is permitted without a shipping bill or in anticipation of the delivery of a shipping bill, a general residuary clause is being provided specifying that in the case of goods not exported in accordance with the normal procedure, the date for determining the rate of duty shall be the date of payment of duty.

Clause 17.—Sub-clause (1) corresponds to existing section 31, with the modification that all imported goods or goods to be exported and not only goods liable to *ad valorem* duty will now be liable to be examined. Another amendment gives to the Customs Officers discretion to examine all or any part of the goods.

Sub-clause (2) corresponds to existing section 87, sub-clause (3) corresponds to second para. of existing section 29, and sub-clause (4) corresponds to existing section 29-A.

Clause 18 corresponds to existing section 29-B, and makes the following amendments:—

(i) Provisional assessments will now be permissible if the Customs Officer deems it necessary to make further enquiries before he assesses the goods. This will avoid detention of goods in such cases.

(ii) Even in the case of goods to be warehoused, provisional assessment will be permissible.

Clause 19 replaces existing section 21, with the following amendments:—

(i) Strictly speaking, the provisions of the existing section apply even where certain articles liable to different rates of duty form ingredients of certain goods. This provision is being deleted, as being obsolete.

(ii) It is being specifically provided that articles which are liable to duty with reference to quantity shall be chargeable to that duty only.

(iii) Two provisos are being added. The first one states that accessories of, and maintenance and repair implements for, any article which satisfy the conditions specified in the Rules made in this behalf by the Central Government shall be chargeable at the same rate of duty as the main article with which they are imported. This should give considerable relief from the hardships which a strict application of the existing section would cause. The second proviso provides that if the importer produces evidence to the satisfaction of the Customs Officer regarding the value of the articles liable to different rates of duty, each such article shall be charged to duty at the rate applicable to it. This, again, will prove to be a big facility in cases of this type.

Clause 20 corresponds to existing sections 25 and 26, with the following changes:—

(i) The condition that property in the re-imported goods should not have changed hands, is being deleted, as it has resulted in the denial of concession in cases where the foreign buyer had taken delivery of the goods which were later rejected

on inspection. The implied condition that the goods are the same which were exported is being specifically provided.

(ii) Where goods exported under a claim for drawback of Central Excise duty are re-imported, the amount of drawback shall be repaid in the form of a Customs duty. Under the existing provision the amount of Central Excise duty leviable at the time of re-importation has to be paid. Since the rate of drawback allowed on export is fixed *ad hoc* and may be more or less than the actual duty paid, it is but fair that on re-importation duty should be levied at the same *ad hoc* rate.

(iii) In the case of goods which are exported in bond without payment of customs duty or the Central or State Excise duty, an amount equal to such duties calculated at the rates prevailing at the time and place of re-importation of the goods will have to be paid in the form of a Customs duty. This is a new provision.

(iv) The provision giving discretion to the Chief Customs Officer to waive the payment of Excise duty even though drawback was received at the time of exportation, is being deleted.

(v) Sub-clause (2) is a new provision which lays down that goods shall be deemed to have been produced or manufactured in India if at least 25% of the total cost of production or manufacture of the goods has been incurred in India. This provision is being made to avoid disputes.

Clause 21 corresponds to existing section 27.

Clause 22 replaces existing sections 33, 34, 34A, 35 and 114, with the following changes:—

(i) Under the existing sections, abatement of duty can be allowed:—

(a) in respect of goods liable to *ad valorem* duty if they are damaged,

(b) in respect of goods liable to duty on tariff value if they have deteriorated to the extent of more than one-tenth of the value,

(c) in respect of goods liable to specific duty, other than wine, spirit or beer, which have been notified by the Central Government, and which have deteriorated to the extent of more than one-tenth of the value.

These distinctions are being abolished and abatement will now be admissible in respect of all goods and for damage as well as

deterioration. The revised provision will give relief to importers whose goods may deteriorate or may get damaged.

(ii) Under the existing sections, abatement of duty is allowed only in respect of damage or deterioration sustained before the delivery of the bill of entry. Under the revised provision, abatement will be allowed in respect of damage and deterioration up to the stage of unloading of the goods. Thus the thoughtful importer who puts in his bill of entry before the unloading of the goods will not be penalised as at present. At the same time, the importer who delays putting in a bill of entry will not get any relief on account of any deterioration of goods during the period of delay.

Abatement of duty will also be allowed in respect of damage sustained due to an unavoidable accident after the unloading of the goods but before their examination.

(iii) The provision in existing section 33 for determining the extent to which abatement of duty may be allowed in respect of goods liable to *ad valorem* duty is being extended to other goods also.

Clause 23.—Sub-clause (1) replaces existing section 122. Under the existing section remission of duty is permissible only if goods are lost or destroyed by unavoidable accident or delay. Under the revised provision remission of duty may be allowed in all cases where goods are lost or destroyed whatever may be the reason. Since cases of total loss or destruction cause considerable hardship, a generous approach is being made. Further, the new provision will specifically permit remission of duty not only in respect of warehoused goods as at present but also in respect of other goods which are cleared direct for home consumption. Importers will welcome this relief. Sub-clause (2) replaces the last para of existing section 100 and lays down that the proper officer may require that the abandoned goods should be surrendered to the Customs Department. Again, the concession in the proposed provision will specifically cover not only warehoused goods which alone enjoy the concession at present but also goods cleared direct for home consumption. This would be an additional relief to importers whose goods have completely deteriorated.

Clause 24 replaces existing section 155. The scope of the present concession in the rate of duty is restricted to spirits only. The concession is being extended to all goods, specified by the Central Government which can be used for more than one purpose. The importers of goods which can be put to more than one use will get considerable relief by this provision. The new provision will end

such disputes as arise at present regarding the proper rate of duty leviable on such goods.

Clause 25 corresponds to existing section 23 with the following amendments :—

(i) the provision about the grant of exemptions in respect of goods imported into or exported from particular ports is being deleted. The new provision will permit the grant of exemptions in respect of goods imported for consumption in any area having special features.

(ii) sub-clause (2) corresponds to the second part of existing section 23 and specifies a new condition that exemption in individual cases may be granted only if the Central Government is satisfied that it is necessary in the public interest.

Clause 26 is a new provision which permits the refund of export duty if the goods are returned to the exporter within one year from the date of exportation. This concession has been demanded by the trade and is legitimate.

Clause 27 replaces existing section 40, with the following amendments :—

(i) the period of three months for claiming refund is being increased to six months. The Customs Advisory Council recommended such increase so that refunds legitimately due may not be rejected as time-barred.

(ii) it has been specifically provided that where duty has been paid under protest, the time-limit will not apply. This facility is at present given under executive instructions.

(iii) claims for refund made before the actual crediting of the duty will now be treated as claims made within the time-limit.

(iv) it is being specifically provided that the time-limit for claiming refund shall not apply where refunds have to be given as a result of any order passed in appeal or revision.

(v) the new provision will apply to all types of refunds without any qualifying condition as at present.

(vi) the existing provision contains only a time-limit for claiming a refund. There is no positive provision for the grant of refund. The revised clause makes such a provision.

(vii) at present, refunds can be claimed even though the assessment may have been made by an Assistant Collector of Customs or the Collector of Customs. It is now being provided

that refunds can be claimed only in respect of an order of assessment made by an officer of Customs lower in rank than an Assistant Collector of Customs. The remedy in respect of orders passed by Asstt. Collectors and higher officers will be to file an appeal.

Clause 28 replaces existing section 39 with the following amendments :—

(i) the existing time-limit of 3 months is being increased to 6 months. The period laid down for refunds and recoveries should obviously be the same.

(ii) there shall be no time-limit for issuing notice of recovery where duty has not been levied or has been short-levied or has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter.

(iii) it is being made clear that the notice which has to be issued within the time-limit is not the final one but only a show-cause notice. But the amount of duty which may finally be ordered to be recovered shall not exceed the amount specified in the notice.

(iv) the time-limit will, generally speaking, be computed from the date of payment of duty and not from the date of the first assessment as at present.

(v) the new provision will apply to all types of short-levies, non-levies and erroneous refunds, without any qualifying condition as at present.

Clause 29 is a new provision. In so far as vessels are concerned, it makes it obligatory on vessels coming from foreign ports to call at a customs-port only until all the passengers have disembarked and all imported cargo has been unloaded. This provision is necessary for proper control.

Clause 30 replaces existing sections 53, 54, 54-A and 55 with the following amendments :—

(i) the person-in-charge of a vehicle will be required to deliver an import report. Under clause 43(1) private cars and buses have been exempted from this requirement.

(ii) under the existing sections 53 and 54, an import manifest has to be filed immediately after arrival of a vessel or within 24 hours, depending on whether the Board has issued a notification in respect of a port or not. Under the proposed provision, import manifests are to be filed immediately on

arrival of a conveyance, but the proper officer of Customs has been given discretion to permit, on sufficient cause being shown, such time for delivering the manifest as he deems proper.

(iii) it would no longer be necessary to obtain the permission of the proper officer of Customs for delivering a manifest before the arrival of a vessel.

(iv) the proper officer of Customs will now be empowered to permit amendment or supplementation of import manifest in all cases where he is satisfied that there was no fraudulent intention. The existing provision permits amendments in cases of obvious errors only. This amendment will enable the Customs Officers to give relief by permitting genuine amendments.

Clause 31 corresponds to existing sections 57 and 59. Sub-clause (2) is a new provision which will enable vessels to unload immediately baggage, mail-bags, animals, perishable goods and hazardous goods without waiting for the grant of entry inwards.

Clause 32 replaces existing section 82 with an amendment which specifies that only those goods can be unloaded at a Customs Station which are specified in the import manifest for being unloaded at that customs-station. This amendment is being introduced to prevent unauthorised landing of goods. The corresponding penal clause 111(g) provides relief in respect of inadvertent landings.

Clause 33 corresponds to existing section 73 with an amendment which gives discretion to the proper officer to allow unloading of imported goods also at a place other than an approved landing place.

Clause 34 corresponds to existing section 70.

Clause 35 corresponds to existing section 76 with the following amendments:—

(i) the provisions about form of a boat-note and other details have been omitted.

(ii) in the case of goods to be exported which are accompanied by a shipping bill, a boat-note will not be required.

(iii) discretion has been given to the proper officer of Customs to dispense with the requirement of a boat-note in any case.

Clause 36 corresponds to existing section 72 but instead of leaving it to the discretion of the Customs Officer to give or not to give permission for loading or unloading of goods on holidays and outside the

working hours, it provides the conditions subject to which such permission may be granted.

Clause 37 replaces existing sections 67 and 68, but omits matters of detail.

Clause 38 corresponds to existing section 58 and clause (c) of second para. of existing section 73. Under the existing section the customs officers can ask questions in respect of certain specified matters. Under the new provision customs officers are being given the power to ask questions for carrying out the provisions of the Act.

Clause 39 replaces existing section 61, but omits matters of detail.

Clause 40 corresponds to certain provisions in existing section 137.

Clause 41 replaces the provisions in existing sections 63 and 66 regarding the export manifest, with the following amendments:—

(i) the person-in-charge of a vehicle will be required to deliver an export report. Under clause 43(1), private cars and buses have been exempted from this requirement.

(ii) the proper officer of Customs is being empowered to permit amendment or supplementation of export manifest if there was no fraudulent intention. The existing provision permits amendment in cases of obvious errors only.

(iii) the time-limit within which the export manifest may be delivered after the departure of a conveyance will now be decided by the proper officer of Customs considering the needs of each case, whereas the existing section 66 specifies a fixed time-limit of five days.

Clause 42 replaces the provisions in existing sections 62, 63, 64, 65 and 66 regarding port clearance with the following amendments:—

(i) the person-in-charge of a vehicle will also have to satisfy certain specified requirements. Under clause 43(1), private cars and buses have been exempted from these.

(ii) the provision that masters of vessels shall make an application for port clearance at least 24 hours before the intended departure of the vessel is being deleted.

(iii) shipping bills and other documents on which clearance of goods has been permitted will have to be delivered by the person-in-charge of a conveyance to the proper officer of Customs, before the departure of a conveyance. This provision is being made for better control.

(iv) the obsolete provision in existing section 64 requiring the ship's agent to stand guarantee for the discharge of all claims for damage or short-delivery which may be established by the importers is being deleted.

(v) item (f) of sub-clause (2) is a new provision which specifies the action to be taken where goods have been loaded in contravention of the relevant provisions.

Clause 43—Sub-clause (1).—Since most of the provisions of this Chapter will apply to vehicles also, it is being provided that vehicles not carrying any goods other than baggage of persons shall be exempt from certain procedural provisions.

Sub-clause (2) is a new provision which permits the Central Government to exempt by notification certain specified classes of conveyances from all or any provisions contained in Chapter VI.

Clause 44 exempts from the provisions of Chapter VII baggage and postal articles.

Clause 45 replaces existing section 85 with the following amendments:—

(i) the existing section specifies that either the Port Trust or the Customs Department shall take charge of the landed goods. The new provision enables the Collector of Customs to approve for this purpose other persons also like officers of State Governments in charge of minor ports, agents of the vessel or aircraft.

(ii) item (a) of sub-clause (2) is a new provision which provides specifically that the person in whose custody imported goods are kept shall keep a record of such goods and shall send a copy thereof to the proper officer of the Customs.

(iii) the existing obsolete provision making the ship's agents liable to discharge all claims for damage and short-delivery is being deleted.

Clause 46 replaces first and third paras. of existing section 29 and section 86, with the following amendments:—

(i) the particulars to be mentioned in a bill of entry have not been specified in the clause but will be prescribed in the regulations.

(ii) the Collector of Customs is being empowered to permit in special circumstances the presentation of a bill of entry even before the delivery of the import manifest. This will facilitate quick clearance of goods even if the vessel's agent has been negligent in not presenting the manifest promptly.

(iii) the provision that particulars of a bill of entry shall correspond with the particulars given in the import manifest is being replaced by a provision that except where the proper officer so permits a bill of entry shall be for all the goods included in the relevant bill of lading. Since an importer is required to make a true declaration, he cannot at the same time be asked to make a declaration which corresponds with what is contained in the import manifest, over which he has no control.

(iv) sub-clause (4) of the new clause requires the importer to produce the invoice, if any, in support of the particulars furnished by him in the bill of entry.

(v) sub-clause (5) is a new provision which permits the proper officer of Customs to allow substitution of a bill of entry for home consumption for a bill of entry for warehousing or *vice versa* if the interests of revenue are not prejudicially affected and if there was no fraudulent intention.

Clause 47 corresponds to existing section 89 with an amendment which provides specifically that the proper officer shall allow clearance of the goods if he is satisfied that the import of the goods is not prohibited.

Clause 48 corresponds to certain parts of existing section 88 with the following amendments:—

(i) the time-limit of four months allowed in the existing section is being reduced to two months. The proposed limit is in conformity with the limit laid down in the Port Trust Acts.

(ii) the proper officer of Customs is being given discretion to extend this time-limit.

(iii) the sale of the uncleared goods shall now be done by the person having custody of the goods after he has obtained the permission of the proper officer of Customs.

(iv) the power to sell any goods even before the expiry of the time-limit at present restricted to perishable goods only will now be exercisable in respect of animals and hazardous goods also.

Clause 49 is a new provision which enables the Assistant Collector of Customs to permit the keeping of imported goods in a warehouse without the goods being warehoused, if he is satisfied that the goods cannot be cleared within a reasonable time. At present if there is any delay in the clearance of the goods, the importer has to pay demurrage charges and many a time part of the goods get pilfered. The proposed facility of keeping such goods in a warehouse will solve both these difficulties.

Clause 50 replaces the provisions of existing section 137 regarding shipping bills, with the following amendments:—

(i) the particulars to be mentioned in a shipping bill are not being specified in the clause but will be prescribed in the regulations.

(ii) the power vested in the Collector of Customs to exempt any goods from the requirement of being entered in a shipping bill is being taken away, because whenever any goods have to be exported, there must necessarily be a document covering them.

Clause 51 replaces certain parts of section 137 with an amendment which provides specifically that the proper officer shall allow the clearance of goods for export if he is satisfied that the export thereof is not prohibited.

Clause 52 is a new provision which mentions specifically that the provisions of Chapter VIII shall not apply to baggage, postal articles and stores.

Clause 53 is a new provision which provides that goods mentioned in an import manifest as for transit in the same vessel or aircraft to any port of airport in India or outside India may be allowed to be so transitted without payment of duty. The clause also makes it clear that the prohibitions on the bringing or taking of goods into or out of India shall apply to such goods.

Clause 54 replaces existing sections 128 and 134, with the following amendments:—

(i) sub-clause (1) is a new provision which specifically provides that any person intending to tranship any goods shall present a bill of transhipment to the proper officer of Customs.

(ii) sub-clause (2) provides that when goods are to be transhipped to a port or airport outside India, the prohibitions on the bringing or taking of goods into or out of India shall apply.

(iii) the existing section provides that if the transshipment is from a small port, a security or bond may be taken for the due arrival of the goods at the place of destination, and if the transshipment is from a big port, no bond shall be taken. The need for ensuring due arrival of the imported goods at the port of destination is dependent on the nature of the goods, the nature of the on-carrying vessel, etc. and not on the port from which goods are being transhipped. Hence, the existing distinction is being abolished. The Central Board of Revenue is being given the power to prescribe by regulations such conditions as it considers necessary for the due arrival of any such goods at the port of destination, irrespective of the port *from* which transshipment is to be **allowed**.

(iv) a new condition is being specified to the effect that if the goods are to be transhipped to a minor port or airport in India, the transshipment shall be allowed only if the goods are *bona fide* intended for transshipment to such port or airport. This condition is being imposed in order to counteract *mala fide* attempts to clear the goods at minor ports where the customs staff is not very experienced or high-powered.

Clause 55 corresponds to existing section 131.

Clause 56 is a new provision which will enable the transport of imported goods from one land customs station to another and transport of any goods from one part of India to another part through any foreign territory, subject to such conditions as the Board may prescribe by regulations for the due arrival of such goods at the place of destination.

Clause 57 corresponds to existing section 15, with an amendment which gives the power of appointment of public warehouses to the Assistant Collector of Customs instead of the Collector of Customs.

Clause 58 replaces existing section 16 with the following amendments:—

(i) the power to license private warehouses is being given to the Assistant Collector of Customs instead of the Collector of Customs.

(ii) it is being specifically provided that in a private warehouse, ordinarily the goods belonging to the licensee only shall be kept.

(iii) the grounds for cancellation of a licence are being made comprehensive.

(iv) provision for the suspension of a licence, pending an enquiry, is also being made.

Clause 59 corresponds to existing sections 92 and 109, with the following amendments:—

(i) at present, there is no provision for permitting the warehousing of goods imported by land. Under the new provisions goods imported by land will also be allowed to be warehoused.

(ii) sub-clause (3) is a new provision which will enable an importer to enter into a general bond for the warehousing of goods to be imported by him within a specified future period. This will help ship-chandlers and aircraft agents.

(iii) it is being specifically provided that even if the goods are transferred to another person, the bond executed by the seller shall remain in force, but if the transferee executes a fresh bond in respect of the goods purchased by him, the bond executed by the transferor shall be deemed to be reduced to the extent of the amount for which the fresh bond is executed.

Clause 60 replaces existing section 93 and first four paras, of existing section 94, and omits the procedural details mentioned in the existing sections. Specific provision has been made that the proper officer of Customs shall make an order permitting the deposit of the goods in a warehouse.

Clause 61 corresponds to existing section 103 with the following amendments:—

(i) the first proviso permits the Collector of Customs to reduce the period of three years in the case of any goods which are likely to deteriorate. This is essential to safeguard revenue.

(ii) another proviso permits the Collector to give extension of the period of warehousing up to one year and the Board to give extension for further periods.

Clause 62 corresponds to existing sections 97, 98 and 124.

Clause 63 corresponds to existing section 101 with the amendment that the goods shall be sold by the warehouse-keeper with the permission of the proper officer of Customs.

Clause 64 replaces existing section 99 and certain parts of existing section 100. Item (e) of the new clause permitting the bonder to show the goods for sale is a new facility.

Clause 65 corresponds to sub-sections (1), (2) and (3) of existing section 100-A with the following amendments:—

The existing section permits the destruction of any refuse or surplus goods resulting from any operations and allows the remission of duty thereon. Under the new provision duty will be remitted on only such portion of the refuse as has resulted from an operation connected with goods which are exported. Where the manufactured goods are cleared for home consumption, duty on the refuse which has resulted from the manufacture of such goods shall not be remitted. This is being provided because refuse in manufacture is not a loss to the manufacturer. While calculating the cost of production, he adds the cost of wasted materials. And if the product is consumed in India, there is no reason why duty should not be paid on the wasted materials.

Clause 66 corresponds to sub-section (4) of existing section 100-A with an amendment which specifies a guiding principle for the grant of exemption.

Clause 67 replaces existing sections 104—108, but the procedural details specified in the existing section have been omitted.

Clause 68 corresponds to existing section 110.

Clause 69 corresponds to existing section 111. Instead of the existing proviso which gives the Central Government the power to prohibit the export of any warehoused goods, sub-clause (2) of the new clause specifies a guiding principle that this power shall be exercised in respect of such goods as are likely to be smuggled back into India.

Clause 70 replaces existing sections 116 and 117, with the following amendments:—

(i) the concession which is at present given in respect of wine, spirit and beer in casks and salt will now be admissible in respect of such volatile goods which the Central Government may notify. The existing concession in respect of natural loss of wine, spirit and beer is being extended to other volatile goods.

(ii) the provisions laying down the maximum percentages and giving discretion to the Board to change the limits generally and to the Collector to modify the limit in individual cases, are being deleted. Duty will be remitted on the quantity genuinely deficient due to natural loss without fixing any statutory maximum limit.

Clause 71 corresponds to existing section 102.

Clause 72 corresponds to existing sections 118 and 119 with an amendment which permits the proper officer to detain and sell any warehoused goods belonging to the concerned person instead of only the goods on account of which any duty is due.

Clause 73 corresponds to existing section 121.

Clause 74 corresponds to existing sections 42, 43, 43A and 49 (a) with the following amendments:—

(i) under the existing provisions, re-exports by land are not entitled to drawback. The new provisions provide for the payment of drawback in respect of re-exports by land also.

(ii) under the existing section 42, the rate of drawback is $\frac{7}{8}$ ths of the import duty paid and the whole of it in the case of silver bullion. A uniform rate of 95 per cent. of the import duty paid is proposed under the new clause.

(iii) under the existing section 43, the normal period of two years within which drawback may be claimed is extended to three years when goods are re-exported from a port other than the one where they were imported. Under the new clause, drawback claims in respect of exports from other ports also have to be made within the same period.

(iv) the power conferred on the Collector of Customs to extend the period to three years is being taken away considering that in other countries the time-limit is usually one year only; but the Board is being empowered to give such extension as it may deem fit.

(v) the period of two years will now be counted from the date of payment of duty up to the date when goods are entered for export, whereas under the existing provision the period is counted from the date of importation to the date of exportation. The new method of calculating the time-limit will be easier and is more favourable to the trade.

(vi) specific provision is being made for prescribing the manner in which identity may be established of goods imported in different consignments but stored together in bulk. The concession is at present granted under executive instructions.

(vii) for regulating the rate of drawback in the case of used goods a guiding principle has been laid down in sub-clause (2).

Clause 75 corresponds to existing section 43B with the following amendment:

For fixing the rate of drawback in respect of exports of any goods, the existing section has a specific provision for averaging

the quantity of imported material used in the manufacture of goods of that class or description. There is no specific provision for averaging the price of the imported material, or for averaging the rate of duty in case the imported materials are assessable on standard as well as preferential rates. Specific provision is now being made for averaging the amount of duty paid which implies the averaging of quantity, price and rate of duty. This will give statutory authority to the existing practice.

Clause 76.—Sub-clause (1) corresponds to existing section 50, with the following amendments:

(i) the condition that goods under claim for drawback must have been included in the export manifest will apply in respect of only those goods which are required under the regulations to be included in an export manifest.

(ii) it is being made clear that the value of goods under claim for drawback which must not be less than the amount of drawback refers to the market-price of such goods.

(iii) the discretion vested in the officers of Customs to allow drawback for less than rupees five is being taken away.

Sub-clause (2) of the new clause corresponds to the existing section 49(b). It specifies a guiding principle that prohibition against the payment of drawback may be imposed only in those cases in which the Central Government is of opinion that the goods exported under a claim for drawback are likely to be smuggled back into India.

Clause 77 is a new provision which specifies that the owner of any baggage shall make a declaration of its contents to the proper officer of Customs.

Clause 78 is a new provision which specifies that the rate of duty and tariff valuation applicable to baggage shall be the rate and valuation in force on the date on which the owner of the baggage makes a declaration under the previous clause to the proper officer.

Clause 79 replaces existing section 24 with the following changes:—

(i) the existing section specifies that baggage in actual use will be exempt. Obviously, everything in actual use cannot be passed free of duty. It is now being stipulated that only such article shall be exempt from duty as have been in the owner's use for the minimum period specified in the rules to be made by the Central Government.

(ii) provision is being made to exempt even new articles from duty under certain circumstances, so that gifts, souvenirs and novelties that passengers usually bring may be passed free of duty.

Clause 80 is a new provision which gives to the passengers the facility of temporarily leaving the baggage with the Customs Department if they are unable to clear it.

Clause 81 replaces existing section 75 in so far as the latter relates to baggage.

Clause 82 is a new provision which lays down that a label or declaration accompanying postal goods which contains the description, quantity and value thereof shall be deemed to be an entry for Customs purposes.

Clause 83 is a new provision which specifies the crucial date for determining the rate of duty and tariff valuation in respect of goods imported or exported by post.

Clause 84 replaces existing section 75 in so far as the latter relates to postal goods.

Clause 85 is a new provision which permits the warehousing of stores without their being assessed to duty.

Clause 86.—Sub-clause (1) provides specifically that any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India. This will enable foreign-going vessels to keep stores on board while they are temporarily engaged in coastal trade, instead of paying duty and then claiming drawback.

Sub-clause (2) replaces the existing section 132 and deleting the existing condition that the vessels must belong to the same owner and should be in port at the same time, but specifies a new condition that transfer shall be allowed only if the receiving vessel is entitled to consume the stores free of duty.

Clause 87 is a new provision which gives to vessels or aircrafts the facility of consuming stores without payment of duty during the period they can be classified as 'foreign going' whereas under the existing provision the facility is allowed only when a vessel is proceeding to a foreign port.

Clause 88 specifies the concessions in respect of stores admissible under the existing sections 42, 43B and 112.

Clause 89 corresponds to existing section 28. The scope of the new clause is limited to customs duty only, and does not extend to excise duty (Central or State). The Central Excise Act has a separate provision for granting such exemption. For State excise, the provision has to be made by the States.

Clause 90 replaces existing section 48 in respect of imported stores for the use of the Indian Navy. As regards provisions for naval officers and seamen which have to be paid for by them, the existing obsolete facility of allowing the whole of the import duty as drawback is being taken away. On such provisions, the rate of drawback will be 95 per cent, as for other goods.

Chapter XII (Clauses 91 to 98) which corresponds to Chapter XV of the existing Act has been completely re-cast because an entirely new procedure for the carriage of coastal goods has been devised. The outlines of the new procedure are as follows:

The consignor of any coastal goods shall present a bill of coastal goods in the prescribed form. After it has been passed by the Customs Officer, the goods will be loaded and the bill handed over to the master of the vessel. If the charges and penalties due have been paid, the vessel will be permitted to depart. At the port of destination, the master will hand over the respective bills of coastal goods to the Customs Officer who will permit clearance of the goods if they correspond to the entries in this bill.

The master of the vessel will also carry an advice book in which the Customs Officers will make suitable entries as an advice to the respective ports of destinations. The new procedure will be a big step forward in the speedy clearance of coastal goods. Formalities will be reduced to the absolute minimum. From the administrative point of view also the system will be better.

Clause 99 corresponds to clauses (c) and (d) of the existing section 157. The purposes for which restrictions may be placed on the coastwise carriage of goods are being indicated as guiding principles.

Clause 100 corresponds to the existing section 169 but provides in addition to the existing categories, the following categories of persons who may be searched on suspicion:—

(i) any person who is about to board a vessel within the Indian Customs waters or is about to board an aircraft or vehicle proceeding to a place outside India; and

(ii) any person in a Customs area.

It is necessary to have the power to search outgoing passengers, when they present themselves for customs clearance, in order to check smuggling out of wealth, etc. Further, since persons in the dock area sometimes receive smuggled goods and then pass them out, it is necessary to have the power to search such suspected persons.

The powers to search shall also be exercisable if a person is suspected to have secreted about his person any documents relating

to goods liable to confiscation. Documents in possession of suspected persons give many clues. Further, they can be tendered as evidence if a prosecution is launched.

Clause 101 is a new provision which will enable certain duly empowered officers of customs to search suspected persons anywhere in India if they are suspected to have secreted about their person, gold, precious stones, watches and other notified articles liable to confiscation. The markets at which smuggled goods are sold are spread all over the country. Hence it is essential to have the powers of search anywhere in India. The powers shall, however, be conferred only in respect of certain specified articles which are being smuggled on a large scale. Further, they will be exercised only by such officers as are empowered by the Collectors of Customs.

Clause 102 corresponds to the existing section 170.

Clause 103 corresponds to the existing section 170-A.

Clause 104 replaces the existing sections 173, 174 and 175, with the following amendments:—

(i) under the existing section 173, any person suspected to be guilty of any offence under the Customs Act may be arrested. Under the proposed clause, persons suspected to be guilty of an offence of smuggling only shall be liable to be arrested. Since arrest deprives a person of his personal liberty, it will be confined only to those cases where smuggling is involved.

(ii) only such officers of customs who have been empowered in this behalf by general or special order of a Collector of Customs will have the power to arrest persons. This is intended to prevent the abuse of this power.

(iii) in addition to the power to commit an arrested person to jail or order him to be kept in police custody, the magistrate is being empowered to order the arrested person to be kept in such other custody as he deems fit.

(iv) under the new provision the power to detain a person accused of an offence, unless he offers bail, can be exercised pending investigation of the offence by officers of customs.

Clause 105 replaces the existing section 172, with the following amendments:—

(i) The power to authorise search of premises will now be exercised by the Assistant Collectors of Customs whereas at present it is exercised by magistrates on the basis of the belief

of a customs officer incharge of a customs station or the belief of an Assistant Collector of Customs. The existing dual system is unsatisfactory. The customs officers charged with the checking of smuggling have no power to issue search warrants, and the magistrate empowered to issue a search warrant has to act on the belief of the customs officers. Essentially, the decision whether under certain circumstances particular premises are likely to have been used for concealing smuggled goods is an executive decision and not a judicial one. In the laws of other revenue departments *e.g.* Income-tax, Central Excise, State Excise, Sales Tax, and in the customs laws of other countries, the power to search premises is conferred on departmental officers. The Taxation Enquiry Commission had also recommended this change in the customs law.

(ii) In the areas adjoining the land-frontier or the coast of India, officers of customs specially empowered by name in this behalf by the Board will also have the power to search suspected premises. Across the land and sea frontier, goods can be smuggled at any point and it will be impracticable to get an authorisation from an Assistant Collector of Customs whose jurisdiction may spread over 200 miles or so of the border. It is, therefore, proposed that the Central Board of Revenue will specially select certain officers and these officers will have the powers of search. The proposal is on the lines of the system prevailing in U.K. and Australia.

(iii) Premises may be searched if they are suspected to contain *inter alia* any documents or things which would be useful or relevant to any proceeding under the Act, whereas the existing provision permits search only for any documents relating to goods liable to confiscation.

Clause 106 replaces existing section 171, with an amendment which permits the use of force when it becomes necessary to land aircrafts or stop vehicles and animals, while the existing section gives this power in respect of vessels only.

Clause 107 is a new provision which will enable officers of customs empowered in this behalf by general or special order of the Collector of Customs to examine persons, require them to produce documents or to make and sign statements. At present, strictly speaking the person concerned has to be summoned by the customs officer. This causes avoidable inconvenience to the person. Further, the time factor is very valuable in certain enquiries. The

dilatory process of issuing summons is not suitable in such investigations. These powers will be exercised only in connection with the smuggling of goods.

Clause 108 corresponds to the existing section 171-A, with an amendment which provides that the powers to summon shall be exercised only by such officers of customs as have been empowered in this behalf by general or special order of the Collector of Customs.

Clause 109 corresponds to sub-section (3) of the existing section 6 of the Land Customs Act, 1924. The provision regarding confiscation of goods in respect of which the order of clearance is not produced has been made in item (k) of clause 111.

Clause 110 replaces the existing section 178 with the following amendments:—

(i) sub-clause (1) specifies the action to be taken where it is not practicable to seize any goods liable to confiscation.

(ii) sub-clause (2) is a new provision which empowers the proper officer to seize any documents or things which will be useful or relevant to any proceeding under the Act. These documents etc. give valuable clues and help in the prosecution of persons accused of any offence.

Clauses 111 to 117.—GENERAL.—These Clauses replace 75 out of a total of 87 penal clauses of the existing section 167, the remaining 12 offences being triable by magistrates. Under the new clauses, the re-arrangement in respect of contravention of the provisions of the Act is as follows:—

Clauses 111 to 117.—GENERAL.—These clauses replace 75 out of which the imported goods are liable to confiscation.

Clause 112 concerns the imposition of a personal penalty on persons who contravene any of the provisions of clause 111 or who abet such contravention.

Clause 113 groups together all serious contraventions in relation to goods to be exported for which the export goods are liable to confiscation.

Clause 114 specifies the personal penalty on persons who contravene any of the provisions of clause 113 or who abet such contravention.

Clause 115 relates to confiscation of conveyances.

Clause 116 specifies the penalty that may be imposed on a person-in-charge of a conveyance for his inability to account for any goods carried in such conveyance.

Clause 117 is a residuary clause which specifies the penalty for contravention of any provision or abetment of such contravention, where no express penalty is provided for elsewhere.

The main changes introduced are indicated clause by clause:

Clause 111.—A general change from the existing provisions is that except where goods are attempted to be imported through unauthorised places, the new provisions will apply to dutiable or prohibited goods only. In the case of similar contravention in respect of goods which are free and for the importation or exportation of which there is no prohibition, the person concerned will be liable to a personal penalty not exceeding one thousand rupees under clause 117.

Items (a) and (b) correspond to the first part of existing clause 2 of section 167.

Item (c) corresponds to second part of the existing clause 2 of section 167.

Item (d) corresponds to the first two sub-clauses of existing clause 8 of section 167, subject to an amendment that goods brought within the Indian customs waters for the purpose of being imported contrary to any prohibition will also be liable to confiscation.

Item (e) corresponds to the existing clause 34 and the fourth sub-clause of existing clause 8 of section 167.

Item (f) corresponds to the existing clause 35 of section 167.

Item (g) is a new provision which specifies that any dutiable or prohibited goods not mentioned in the import manifest for unloading at a particular customs station will become liable to confiscation if they are unloaded there. But a saving provision has been made in respect of goods which are inadvertently unloaded but are included in the record kept by the Port Trust or other person in whose custody the goods are unloaded. This penal clause is necessary to check smuggling by landing unmanifested goods and later on surreptitiously removing them.

Item (h) replaces the existing clauses 28 and 31 of section 167 in so far as they relate to the landing of goods without customs supervision or at a place other than an approved landing place.

Item (i) replaces sub-clause (d) of the existing clause 37 and the existing clause 40 of section 167. Under the existing clause 37(d), action for concealment can be taken only after a bill of entry has been presented, whereas under the proposed provision action can be taken even before the presentation of the bill of entry.

Item (j) replaces the existing clauses 36, 39, 42, 50 and 52 of Section 167.

Item (k) corresponds to sub-section (3) of section 5 of the Land Customs Act, 1924.

Item (l) replaces the existing clause 37 of section 167 but the new provision has been so drafted that the goods shall continue to be liable to confiscation even after they have been cleared, while under the existing clause the liability ceases after clearance.

Item (m) replaces the existing clause 37 of section 167 with the amendment mentioned in Item (l).

Item (n) corresponds to the existing clause 54 of section 167.

Item (o) is a new provision under which any goods exempted from duty or from import prohibitions subject to certain conditions will become liable to confiscation if those conditions are not observed without the prior permission of the proper officer. This penal clause is being introduced to check misuse of exemptions granted in respect of baggage, postal goods etc. These exemptions will henceforth be granted subject to appropriate conditions to the effect that the exempted goods may not be sold etc. If these conditions are not fulfilled, the goods shall be liable to confiscation.

Clause 112 makes the following changes in the existing provisions:—

(i) the existing provisions do not provide for personal penalty on the concerned persons for every contravention specified in the existing provisions corresponding to the new clause 111. Under the proposed clause 112, the persons concerned in every contravention mentioned in clause 111 will become liable to a personal penalty.

(ii) under the existing provisions even where a personal penalty is provided in respect of a contravention, it is leviable only on the persons actually concerned in the contravention. Under the proposed clause any person who abets such contravention will also become liable to a personal penalty. Thus a financier who finances smuggling or a dealer who helps in the disposal of smuggled goods will also be liable to a personal penalty.

(iii) under the existing provisions, the maximum personal penalty that may be imposed for a contravention involving evasion of revenue is one thousand rupees. This is being enhanced to three times the duty sought to be evaded or one thousand rupees, whichever is the higher. The maximum penalty of one thousand rupees is inadequate considering that duty amounting to several thousands of rupees is many a time sought to be evaded.

Clause 113.—A general change from the existing penal provisions is that except where the goods are attempted to be exported through places other than customs stations, it is only the dutiable or prohibited goods which become liable to confiscation. In respect of goods which are free and are not prohibited goods, there will only be a personal penalty under clause 117 on the persons who contravene the provisions or who abet such contravention.

Items (a) and (b) correspond to the first part of the existing clause 2 of section 167.

Item (c) is a new provision under which if any dutiable or prohibited goods are brought near the land frontier or the coast of India for the purpose of being exported from a place other than a customs station, the goods shall be liable to confiscation. This new provision is being made because an attempt to export cannot be said to have been made even if a large amount of currency is taken to a small village near the border for the purpose of export in payment of smuggled gold.

Item (d) corresponds to the provisions in sub-clauses 1, 2 and 5 of the existing clause 8 of section 167 concerning exports, subject to an amendment under which the liability to confiscation shall arise the moment goods are brought within the limits of the customs area (dock limits) for the purpose of being exported contrary to a prohibition, whereas under sub-clause 5 of the existing clause 8 of section 167 the liability to confiscation is incurred only when the goods are brought to a wharf.

Item (e) is a new provision under which any dutiable or prohibited goods found concealed in a package which is brought within the limits of a customs area for the purpose of export will be liable to confiscation. This will help in checking smuggling out of unauthorised goods.

Item (f) replaces the existing clauses 28 and 31 of section 167 in so far as they relate to the loading of goods without customs supervision or at a place other than an approved loading place.

Item (g) is a new provision under which any goods loaded or attempted to be loaded without the permission of the proper officer on any conveyance the eventual destination of which is a place outside India shall be liable to confiscation. This will remove a lacuna in the existing penal provisions.

Item (h) replaces the existing clause 37 in so far as it relates to exports.

Item (i) replaces the existing clause 37 in so far as it relates to exports.

Item (j) is a new provision under which if any goods on which import duty has not been paid are entered for exportation under a claim for drawback, the goods shall be liable to confiscation. This will penalise an attempt to get drawback on the export of indigenous goods.

Item (k) replaces the existing clause 10 of section 167. Under the existing clause the liability to confiscation arises only after drawback has been paid. Thus, if before the payment of drawback, it is found that the goods have not been exported, the existing penal clause is not applicable. Under the new clause the liability to confiscation will commence if the goods cleared for exportation under a claim for drawback are not exported except on account of lack of space in the conveyance by which they were to be exported.

Clause 114 makes similar amendments on the export side which clause 112 makes on the import side.

Clause 115.—Sub-clause (1): Item (a) corresponds to the existing clause 12A of section 167. Since the new Act will apply to aircrafts and vehicles also, the scope of the new clause has been extended to any aircraft which is or has been anywhere in India or any vehicle which is or has been in a customs area. As in the case of the penal provision regarding vessels, the new provision regarding aircrafts and vehicles is also modelled on the lines of a similar provision in the U.K. Act.

Item (b) corresponds to the existing clause 3A of section 167.

Item (c) corresponds to the existing clause 76C of section 167.

Item (d) corresponds to the existing clause 10 of section 167. The scope of the new clause has been extended to cover unloading of warehoused goods also.

Item (e) corresponds to the existing clause 4 of section 167. The liability to confiscation will, however, be attracted only if the whole or a substantial portion of the cargo is found missing, whereas under

the existing clause liability to confiscation arises if any part of the cargo is found missing. The amendment seeks to protect the carrier if, as often happens, he is unable to account for the shortage of a few packages.

Sub-clause (2) replaces the second part of the existing section 168 subject to the following amendments:

Whereas under the existing section a conveyance used in the removal of smuggled goods is liable to confiscation, under the new provision any conveyance used in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation. Thus conveyances used in the smuggling of goods into India will now become liable to confiscation. The following safeguards have, however, been provided:—

(a) if the owner, his agent and the person in charge of the conveyances are able to prove that the conveyance was so used without their knowledge or connivance and that they had taken all the precautions which may be specified in the rules made by the Central Government, the conveyance shall not be liable to confiscation.

(b) in the case of conveyances which are used for the carriage of goods or passengers for hire, the maximum fine in lieu of confiscation that may be imposed is limited to the market-price of the goods sought to be smuggled.

Clause 116 replaces clause 17 of the existing section 167. The existing clause specifies that the penalty for unaccounted for goods may extend to twice the duty chargeable on the goods. It has been clarified that in the case of goods loaded for importation the duty referred to is the import duty, and in the case of coastal goods the duty referred to is the export duty. Secondly, the provision in the existing clause that where the duty leviable cannot be ascertained, the penalty shall not exceed Rs. 500 per package has been deleted.

Clause 117.—This is a residuary clause which covers all the contraventions which are not so serious as to justify confiscation of the goods and the infliction of severe personal penalties. The clause specifies that any person who contravenes any provision of the Act or who abets in such contravention or who fails to comply with any provision of the Act with which it was his duty to comply shall, where no express penalty is elsewhere provided, be liable to a penalty not exceeding one thousand rupees.

Clause 118 corresponds to the first para. of the existing section 168. Under the existing provision, the package in which the goods

liable to confiscation are contained and its other contents automatically get confiscated. Under the new provision their confiscation will be optional.

Clause 119 is a new provision under which any goods used for concealing smuggled goods shall also be liable to confiscation.

Clause 120 is a new provision. Sub-clause (1) provides that smuggled goods may be confiscated notwithstanding any change in their form. This provision is made to meet such cases as smuggled gold being converted into ornaments. Sub-clause (2) specifies that where the smuggled goods are inextricably mixed with other goods, the combined goods shall be liable to confiscation but a proviso has been added to ensure that an innocent owner who proves that any part of the seized goods has not been smuggled is not deprived of that part of the goods.

Clause 121 is a new provision to the effect that where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall also be liable to confiscation. The intention is that when a raid is made, and it is found that the smuggled goods have already been sold, the sale proceeds in the hands of the smuggler or his accomplices may be seized and confiscated.

Clause 122 corresponds to the existing section 182 with the following amendments :—

The existing provisions in clause (a) regarding the powers of Customs-collector and in clause (b) regarding the powers of Assistant Collector of Customs are being replaced by clause (b) of the new provision, which specifies that Assistant Collectors of Customs may exercise powers of confiscation of goods of a value not exceeding ten thousand rupees. This limit has been proposed in order that contraventions in respect of small consignments are adjudicated by the Assistant Collectors. The power for imposing personal penalty is being extended to two thousand rupees which is the same as the power of a First Class Magistrate. Item (c) of the new Clause replaces clause (c) of the existing section and gives to gazetted officers of Customs lower in rank than an Assistant Collector of Customs, the power to confiscate goods of a value not exceeding one thousand rupees and the imposition of personal penalty not exceeding two hundred rupees.

Clause 123 corresponds to the existing section 178-A. Sub-clause (1) corresponds to the existing sub-section (1). In sub-clause (2) "watches" have been added, as smuggling in watches is very widespread. Cigarettes and cosmetics have been deleted. They are in
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the same category as other luxury goods such as silk fabrics, cameras, transistors, perfumes, alcoholic liquors. In view of the newly introduced item (o) of Clause 111 it would be possible to take action against such goods without resort to the extreme remedy under clause 123.

Clause 124 is a new provision which specifically provides (a) for the issue of a show-cause notice containing the grounds for taking action, (b) for the giving of an opportunity of making a representation against the grounds mentioned in the show-cause notice, and (c) for the giving of an opportunity of being heard in the matter. This provision is being introduced in order to conform to the principles of natural justice.

Clause 125.—Sub-clause (1) replaces the existing section 183 with the following amendments:—

(i) under the existing section, a fine in lieu of confiscation has to be imposed even if the import or export of goods is prohibited. Under the amended proviso, in the case of prohibited goods it will be within the discretion of the adjudicating officer to release the goods on payment of a fine in lieu of confiscation or not. It would thus be possible to confiscate absolutely goods endangering public order, obscene pictures, etc. whereas at present the only remedy is to impose a disproportionately heavy fine which may be objected to on the ground that it makes the option illusory.

(ii) a proviso has been added to the clause for making it clear that the fine in lieu of confiscation shall not exceed the market-price of the goods less in the case of imported goods, the import duty leviable thereon. This proviso has been inserted in order that the option given should be real and not illusory. Sub-clause (2) has been newly introduced to remove doubts regarding the payment of duty in cases where a fine in lieu of confiscation is imposed.

Clause 126 corresponds to the existing section 184.

Clause 127 corresponds to the existing section 186.

Clause 128 replaces the existing section 188 with the following amendments:—

(i) the authorities to whom appeal shall lie have been specifically mentioned in the new provision instead of being specified by the Central Government.

(ii) the appellate authority is being empowered to extend on sufficient cause being shown the period of limitation for filing an appeal.

(iii) the existing provision that an order in appeal shall not have the effect of enhancing any confiscation or penalty is being deleted. This leads to frivolous appeals which waste the time of senior officers. Further, if a senior officer has considered the merits of a case, there is no reason why his judgment should not prevail whether it be in favour of the appellant or against him, especially when the appellant has the further right of making an application for revision to the Central Government. It is, therefore, proposed to empower the appellate authority to enhance the amount of duty or penalty or fine in lieu of confiscation, or of confiscating goods of greater value. But it is being provided that before doing so, it shall give to the appellant reasonable opportunity of showing cause against the proposed order.

(iv) it is being specifically provided that the time-limit laid down in clause 28 for issuing notice of short-levy etc. will apply even where an appellate authority wishes to enhance the amount of duty.

Clause 129 replaces the existing section 189 with the following amendments :—

(i) it will not be necessary to make a deposit of duty before an appeal is filed in those cases where the goods are still under the control of the Customs. This will remove an unnecessary existing requirement.

(ii) personal penalty will have to be deposited on whomsoever it may have been levied, whether he is the owner of the goods or not.

(iii) in cases where deposit of duty or penalty is required, the appellate authority is being given the discretion to dispense with this requirement if it causes undue hardship to the appellant. This provision will enable the appellate authority to give relief in deserving cases.

Clause 130 replaces the existing section 190A with an amendment which specifically provides that the time-limit laid down in section 28 for issuing notice of short-levy etc. will apply even where an order claiming short-levy is made in revision.

Clause 131 corresponds to the existing section 191 with the following amendments :—

(i) under the existing section, theoretically an application for revision to the Central Government can be made in respect of any decision or order passed under the new law. Under the new clause it is being specifically provided that revision by the

Central Government will only lie against an order in appeal or against certain specified categories of orders in revision passed by the Board or the Collector.

(ii) the proviso to sub-clause (1) specifies that no order enhancing any duty or penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed on a revision application.

(iii) a time-limit of six months which may be extended by **another six months** is being specifically provided for making a revision application.

Clause 132 replaces the first sub-clause of clause 72 of the existing section 167, with the following amendments :—

(i) an abettor is also being made liable to punishment.

(ii) the new clause provides that the punishment may extend to six months' imprisonment, whereas the punishment under the existing provision is a fine not exceeding one thousand rupees. Under other Acts, *e.g.* Income Tax Act, 1961, imprisonment has been provided for similar offences. The other sub-clauses of clause 72 of the existing section 167, being offences under the Indian Penal Code, have been deleted.

Clause 133 corresponds to clause 78 of the existing section 167.

Clause 134 corresponds to clauses 76A and 76B of the existing section 167.

Clause 135 corresponds to clause 81 of the existing section 167.

Clause 136.—Sub-clause (1) corresponds to clauses 75 and 76 of the existing section 167 with an amendment which restricts the scope of the Clause to cases involving evasion of duty or prohibitions only.

Sub-clause (2): Item (a) of this sub-clause corresponds to clause 74 of the existing section 167, but the maximum punishment that may be imposed has been increased from Rs. 500 to Rs. 1000. Item (b) of this sub-clause is a new provision under which vexatious arrest like a vexatious search has also been made an offence.

Sub-clause (3) replaces clause 79 of the existing section 167, with an amendment which permits a Customs officer to disclose, in compliance with any requisition made under any law for the time being in force, any particulars learnt by him in his official capacity. Further, showing of samples will no longer be an offence as that does not lead to disclosure of any secrets.

Clause 137.—Sub-clause (1) replaces the existing section 187A, with the following amendments:—

(i) the existing condition that the complaint in writing should be made by the Collector of Customs or an Assistant Collector authorised by the Collector is being replaced by a condition that the previous sanction of the Collector of Customs should be obtained.

(ii) previous sanction will be necessary not only for offences under Clause 135 which corresponds to clause 81 of the existing section 167 but also in respect of other offences.

Sub-clause (2) is a new provision under which the sanction of the Central Government or the Collector of Customs will be necessary for prosecuting superior and subordinate Customs officers respectively.

Clause 138 corresponds to the existing section 187.

Clause 139 is a new provision which requires the courts to make certain presumptions in respect of documents seized from the custody or control of persons. This provision which is being inserted on the lines of a similar provision in the Foreign Exchange Regulation Act will be helpful in the prosecution of smugglers and their accomplices.

Clause 140 is the usual provision which relates to offences by companies.

Clause 141 is a new provision under which all conveyances and goods in a customs area shall for the purposes of enforcing the provisions of the new law be subject to the control of customs officers. This is necessary for effective control over goods and conveyances. The new clause covers the provisions in the existing Sections 77 and 78.

Clause 142 replaces the second clause of the existing section 39(1) and the existing sections 192 and 193, with the following modifications:—

(i) item (a) of the clause is a new provision which provides specifically that the money due to the Customs Department may be deducted from any money which may be under the control of the Customs Department.

(ii) the existing sections 192 and 193 provide that for recovery of personal penalty any goods belonging to the concerned person may be detained and sold in any other custom

house, but there is no power under the existing section 39 to recover the duty by detaining and selling the goods of such person at another custom house. Provision to this effect has been made in item (b).

(iii) Similarly, there is no provision in the existing section 39 for recovery of customs duty through the District Collector on a certificate being issued by the Assistant Collector of Customs. This provision has been made in item (c).

Clause 143 corresponds to the existing section 195B.

Clause 144 corresponds to sub-section (1) of the existing section 195.

Clause 146 corresponds to the existing section 202.

Clause 147.—Sub-clause (1) replaces the existing section 203 but the procedural provision regarding production of authority is being omitted.

Sub-clause (2) is a new provision which makes the principal liable for the actions of his agent. This provision is necessary so that the principal does not escape the consequences of what has been done by his agent.

Sub-clause (3) corresponds to the existing section 4.

Clause 148.—Sub-clause (1) corresponds to the existing Section 5.

Sub-clause (2) is a new provision which makes the agent responsible for all the penalties and confiscations to which the person-in-charge of a conveyance may be liable. Since the person-in-charge of a conveyance has to leave with the conveyance, it is necessary that his agent in India should be made responsible for all the penalties and confiscations.

Clause 149.—The main clause corresponds to the existing section 201.

The proviso corresponds to the existing section 36 and the last para. of the existing section 94, with a modification which will permit an amendment of a bill of entry or a shipping bill being made even after the goods have been cleared for home-consumption or deposited in a warehouse or have been exported, if the amendment can be substantiated on the basis of documentary evidence in existence at the time the goods were cleared, deposited or exported.

This proviso has been introduced to regularise the concession at present given under executive instructions.

Clause 150 replaces the provisions of the existing sections 88, 101 and 119 regarding the sale of goods, with the following amendments:—

(i) in addition to sale by public auction, sale by tender and, with the consent of the owner, sale in any other manner has also been provided, so that the maximum price may be realised.

(ii) the balance, if any, after meeting all the charges on the goods and any other amount due from the owner of the goods to the Customs Department shall be paid to the owner without any time-limit whereas the existing section specifies that an application for claiming the balance shall be made within one year.

Clause 151 is a new provision which empowers and requires officers of Central Excise Department, the Navy, the Police, the Port officers, the Airport officers and other notified officers to assist officers of customs in the execution of the new law.

Clause 152 replaces the existing section 9(b). It provides that the functions of officers of customs may be delegated to any officer immediately subordinate to him.

Clause 153 is a new provision which specifies the manner in which any order, decision, summons or notice may be served.

Clause 154 is a new provision which permits clerical or arithmetical mistakes to be corrected.

Clause 155.—Sub-clause (1) replaces the existing section 197 with certain modifications. It contains the usual provision regarding protection given to officers etc. for acts done in good faith.

Sub-clause (2) corresponds to the existing section 198.

Clause 156.—Items (a), (b) and (c) correspond to the existing section 9. Items (d) and (e) of sub-clause (2) cover the provisions of the existing Section 19-A. Item (f) covers the provisions of the existing Section 140.

Clause 157 is a new provision which empowers the Board to make regulations to carry out the purposes of the new law.

Clause 158 replaces the existing section 204. It specifies certain ancillary matters in respect of which Rules and Regulations may

be made. Sub-clause (2) further provides that any contravention of a rule or regulation shall be punishable with a penalty which may extend to Rs. 500 or Rs. 200 respectively.

Clause 159 provides that all rules under the new law and notifications issued under certain important provisions shall be placed before both Houses of Parliament.

Clause 160 repeals certain existing enactments. Sub-clauses (3) to (8) pertain to transitional arrangements. Sub-clause (9) corresponds to the existing section 207.

Clause 161.—This is the usual provision regarding the removal of difficulties in giving effect to the provisions of the new law.

FINANCIAL MEMORANDUM

THIS Bill seeks to replace the Sea Customs Act, 1878, and other laws relating to customs and thus no new expenditure apart from what is already being spent on the administration of the existing law is contemplated by reason merely of the passing of this Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 24, 75(2), 79(2), 99 and 156 contain provisions authorising the Central Government to make rules in respect of certain matters. The important matters in respect of which rules may be made are the following:—

(a) the denaturing or mutilation of imported goods ordinarily used for more than one purpose so as to render them unfit for one or more such purposes;

(b) the cases in which draw-back shall be allowed on imported materials used in the manufacture of goods which are exported and the conditions subject to which such draw-back shall be allowed;

(c) the circumstances in which, and the conditions subject to which, baggage may be passed free of duty;

(d) the manner of determining the nearest ascertainable equivalent of the normal price;

(e) the conditions subject to which accessories of, and spare parts and maintenance and repairing implements for, any article shall be chargeable at the same rate of duty as that article; and

(f) the precautions that shall be taken by the owner, his agent and the person-in-charge of a conveyance or animal for preventing the confiscation of the conveyance or animal under sub-clause (2) of clause 115.

2. Clauses 74(3), 81, 84, 146 (2) and 157 confer on the Central Board of Revenue the power to make regulations. The important matters in respect of which regulations may be made are the following:—

(a) the examination, assessment of duty and clearance of goods imported or to be exported by post;

(b) the restrictions and conditions subject to which a licence may be granted to customs house agents;

(c) the form of a bill of entry, shipping bill, export manifest, etc.

3. The matters in respect of which rules or regulations can be made are matters of procedure or administrative detail and it is

hardly possible to provide for them in the Act itself. Moreover, provision in respect of these matters must necessarily be flexible so that they can be altered from time to time according to the changing circumstances. The rule-making and regulation-making powers contemplated in the aforesaid clauses are thus of a normal character.

4. Power is also being conferred on the Central Government to issue notifications under clauses 11, 14, 25, 66, 69, 70, 74, 75, 76, 98, 101, 123 and several other clauses in respect of certain matters such as:—

(a) the prohibition of importation or exportation of certain goods for the purposes specified in sub-clause (2) of clause 11;

(b) the fixation of tariff values for any class of imported goods or goods to be exported, for purposes of assessment of customs duty;

(c) the exemption in the public interest of goods of any specified description from payment of duty.

The powers under the above clauses are intended to provide for a certain amount of flexibility. If these provisions are made rigid, the administration of the Act will become difficult.

BILL No. 55 OF 1962

A Bill to define and amend the law relating to certain kinds of specific relief.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

PART I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Specific Relief Act, 1962.

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(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

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(a) "obligation" includes every duty enforceable by law;

(b) "settlement" means an instrument (other than a will or codicil as defined by the Indian Succession Act, 1925) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of;

39 of 1925.

(c) "trust" has the same meaning as in section 3 of the Indian Trusts Act, 1882, and includes an obligation in the nature of a trust within the meaning of Chapter IX of that Act;

2 of 1882.

(d) "trustee" includes every person holding property in trust;

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(e) all other words and expressions used herein but not defined, and defined in the Indian Contract Act, 1872, have the meanings respectively assigned to them in that Act.

9 of 1872.

3. Except as otherwise provided herein, nothing in this Act shall be deemed—

(a) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(b) to affect the operation of the Indian Registration Act, 1908, on documents.

4. Specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

Specific relief to be granted only for enforcing individual civil rights and not for enforcing penal laws.

PART II

SPECIFIC RELIEF

CHAPTER I

RECOVERING POSSESSION OF PROPERTY

5. A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Recovery of specific immovable property.

6. A person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Recovery of specific movable property.

Explanation 1.—A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

7. Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

Liability of person in possession, not as owner to deliver to persons entitled to immediate possession.

(a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;

(b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Explanation.—Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (b) or clause (c) of this section, presume—

(a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;

(b) that it would be extremely difficult to ascertain the actual damage caused by its loss.

CHAPTER II

SPECIFIC PERFORMANCE OF CONTRACTS

Defences
respecting
suits for
relief based
on contract.

8. Except as otherwise provided herein, where any relief is claimed under this Chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

CONTRACTS WHICH CAN BE SPECIFICALLY ENFORCED

Cases in
which specific
performance
of contract
enforceable.

9. Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced—

(a) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation.—Unless and until the contrary is proved, the court shall presume—

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:—

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff.

10. (1) Except as otherwise provided in this Act, specific performance of a contract may, in the discretion of the court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

Cases in which specific performance of contracts connected with trusts enforceable.

5 (2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

11. (1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

Specific performance of part of contract.

10 (2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be
15 performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

20 (a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract
25 as he can perform, if the other party—

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), the consideration for the
30 whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

35 (4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot, or ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation.—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.

Rights of purchaser or lessee against person with no title or imperfect title.

12. (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:—

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs, on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

CONTRACTS WHICH CANNOT BE SPECIFICALLY ENFORCED

Contracts not specifically enforceable.

13. (1) The following contracts cannot be specifically enforced, namely:—

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications

or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

5 (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

10 of 1940.

(2) Save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

15 (3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—

(a) where the suit is for the enforcement of a contract,—

20 (i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

25 (ii) to take up and pay for any debentures of a company;

(b) where the suit is for,—

30 (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm;

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

35 Provided that the following conditions are fulfilled, namely:—

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

PERSONS FOR OR AGAINST WHOM CONTRACTS MAY BE SPECIFICALLY
ENFORCED

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Who may
obtain
specific
perform-
ance.

14. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto;

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Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

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(h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company:

5 Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

15. Specific performance of a contract cannot be enforced in **Personal** favour of a person— **bars to relief.**

10 (a) who would not be entitled to recover compensation for its breach; or

15 (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

20 (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

25 (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

 (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

30 16. (1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor— **Contract to sell or let property by one who has no title, not specifically enforceable.**

 (a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

35 (b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

Non-en-
forcement
except with
variation.

17. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely:—

(a) where by fraud, mistake of fact or mis-representation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract;

(b) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce;

(c) where the parties have, subsequently to the execution of the contract, varied its terms.

Relief
against
parties and
persons
claiming
under them
by sub-
sequent title.

18. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

DISCRETION AND POWERS OF COURT

19. (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Discretion as to decreeing specific performance.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance—

10 (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

15 (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

20 (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

Power to
award com-
pensation in
certain
cases.

20. (1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly. 5

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly. 10

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872. 15

9 of 1872.

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation. 20

Explanation.—The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section. 25

Power to
grant relief
for posses-
sion, parti-
tion, refund
of earnest
money, etc.

21. (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for— 5 of 1908.

(a) possession, or partition and separate possession, of the property, in addition to such performance; or 30

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made to him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: 35

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief. 40

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 20.

22. (1) A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

Liquidation of damages not a bar to specific performance.

(2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

23. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

Bar of suit for compensation for breach after dismissal of suit for specific performance.

20 ENFORCEMENT OF AWARDS AND DIRECTIONS TO EXECUTE SETTLEMENTS

24. The provisions of this Chapter as to contracts shall apply to awards to which the Arbitration Act, 1940, does not apply and to directions in a will or codicil to execute a particular settlement.

Application of preceding sections to certain awards and testamentary directions to execute settlements.

CHAPTER III

RECTIFICATION OF INSTRUMENTS

25. (1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act, 1956, applies) does not express their real intention, then—

When instrument may be rectified.

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value. 5

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced. 10

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:

Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim. 15

CHAPTER IV

RESCISSION OF CONTRACTS

When rescission may be adjudged or refused. 26. (1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely:— 20

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff. 25

(2) Notwithstanding anything contained in sub-section (1), the court may refuse to rescind the contract—

(a) where the plaintiff has expressly or impliedly ratified the contract; or 30

(b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or 35

(c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or

(d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

Explanation.—In this section “contract”, in relation to the territories to which the Transfer of Property Act, 1882, does not extend, means a contract in writing.

27. (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court. 5

Alternative prayer for rescission in suit for specific performance.

28. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly. 10

Court may require parties rescinding to do equality.

29. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require. 15

CHAPTER V

CANCELLATION OF INSTRUMENTS

When cancellation may be ordered.

30. (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. 20

(2) If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation. 25 16 of 1908.

What instruments may be partially cancelled.

31. Where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue. 30

Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable.

32. (1) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require. 35

(2) Where a defendant successfully resists any suit on the ground—

(a) that the instrument sought to be enforced against him in the suit is voidable, the court may, if the defendant has received 40

any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;

5 (b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872, the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or
10 his estate has benefited thereby.

CHAPTER VI DECLARATORY DECREES

33. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or
15 interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Discretion of court as to declaration of status or right.

Provided that no court shall make any such declaration where
20 the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

25 34. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Effect of declaration.

30 PART III PREVENTIVE RELIEF

CHAPTER VII

INJUNCTIONS GENERALLY

35 35. Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

Preventive relief how granted.

36. (1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of
Civil Procedure, 1908.

Temporary and perpetual injunctions.

40 (2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from

the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER VIII

PERPETUAL INJUNCTIONS

Perpetual
injunction
when
granted.

37. (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. 5

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II. 10

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—

(a) where the defendant is trustee of the property for the plaintiff; 15

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings. 20

Mandatory
injunctions.

38. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. 25

Damages in
lieu of, or
in addition
to, injunc-
tion.

39. (1) The plaintiff in a suit for perpetual injunction under section 37, or mandatory injunction under section 38, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages. 30

(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:

Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim. 35

(3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

40. An injunction cannot be granted—

Injunction
when
refused.

5 (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

10 (c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

15 (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

20 (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.

25 41. Notwithstanding anything contained in clause (e) of section 40, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall
30 not preclude it from granting an injunction to perform the negative agreement:

Injunction to
perform
negative
agreement.

"Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

35 42. In section 32 of the Arbitration Act, 1940, after the words "nor shall any arbitration, agreement or award be", the word "enforced" shall be inserted.

Amendment
of Act 10 of
1940.

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to implement the recommendations of the Law Commission contained in its Ninth Report on the Specific Relief Act, 1877, except in regard to section 42 which is being retained as it now stands. An earlier Bill on the subject introduced in the Lok Sabha on the 23rd December, 1960, lapsed on its dissolution. The notes on clauses, extracted from the Report of the Law Commission, explain the changes made in the existing Act.

ASOKE K. SEN.

NEW DELHI;
The 5th June, 1962.

Notes on clauses

Clause 2.—The definition of trust in the existing Act is not satisfactory inasmuch as it refers to express, implied and constructive trusts without defining them. The expression is now being defined as in the Indian Trusts Act, 1882, as there should be parity between the two enactments. Consequential changes have been made in the definition of trustee.

Clause 3. (Existing section 4).—Clause (a) of existing section 4 has been omitted as unnecessary. Under section 2(h) of the Indian Contract Act, 1872, only an agreement enforceable by law is a contract. A mere agreement is not enforceable in law. In view of clause 2(e) of the Bill, clause (a) of section 4 is unnecessary. (See also notes under clause 8).

The existing sections 5 and 6 have been omitted as being too elementary. Section 9 has been omitted for the reasons given in paragraph 16 of the Report of the Law Commission.

Clause 4. (Existing section 7).—Instead of being cast in the negative form as at present, the revised clause brings out the principle more clearly by saying that specific relief being a civil remedy, the plaintiff must show some individual right to it in every case.

Clauses 5 and 6 reproduce existing sections 8 and 10 with the substitution of the word “provided” for the word “prescribed” in both the sections.

Clause 7. (Existing section 11).—An Explanation modelled on the Explanation to the existing section 12, is added whereby the burden of proving that the case does not fall within clause (b) or clause (c) is laid on the defendant. In such cases it should be for the defendant to prove that the article in respect of which possession is claimed is an ordinary article of commerce having no special value or interest to the plaintiff or that the damage is assessable in money.

Clause 8.—This is new. In India the defences that are available under the law of contract, such as, incapacity of parties, absence of a concluded contract, the uncertainty of the contract, coercion, fraud, misrepresentation, mistake, illegality or want of authority are all dealt with under the Contract Act. Clause 8 prescribes in a compendious way all the defences that are open to a defendant; and incidentally makes the existing section 4(a), which has now been omitted, all the more unnecessary.

Clause 9. (Existing section 12).—Clause (a) of existing section 12 which refers to an obligation arising out of a trust is now being incorporated in clause 10 with the other provision relating to trusts now to be found in section 21(e).

Clause (d) of the existing section 12 seems to sanction the doubtful doctrine that insolvency of the defendant is a ground for decreeing specific performance. It is totally inconsistent with the principle followed in the grant of specific relief, namely, the non-existence or inadequacy of the remedy at law, but not merely the impracticability of enforcing such a remedy. It is, therefore, being omitted.

The Explanation is being amended so as to specify the exceptional cases where courts in India and in England grant specific performance of contracts to transfer movable property on the presumption that damages would not in such cases give adequate relief. The exception as respects goods not easily obtainable in the market has been engrafted from American law where courts have enforced specific performance of contracts to furnish gas, water or other necessary materials to a manufacturing establishment where the thing contracted for is not immediately available from other sources and a breach of contract would stop the operations of the plaintiff's establishment.

Clause 10.—The provisions relating to trusts now found in section 12(a) and section 21(e) are being grouped together. Section 12(a) is out of place in that section as that section relates to executory contracts whereas in the case of an obligation arising out of a trust arises out of an executed contract.

Clause 11.—Sections 14 to 17 deal with claims for specific relief of a part of a contract and section 13 enshrines a principle generally applicable to cases falling within sections 14 to 17. All these sections have now been grouped together.

Sub-clause (1) corresponds to section 17.

Sub-clause (2) corresponds to section 14

Sub-clause (3) corresponds to section 15.

But one important change which has been made in sub-clause (3) is that when the part which must be left unperformed forms a considerable portion of the whole but admits of compensation in money, the plaintiff is allowed a proportionate abatement of the consideration when he is to relinquish all claims to further performance or any further compensation for the breach. In this respect the existing position is inequitable.

Sub-clause (4) corresponds to section 16.

The Explanation reproduces section 13 with verbal changes.

Clause 12.—This is section 18 of the existing Act with the following amendments:—

(a) it is made clear that this clause applies also to absence of title;

(b) by inserting the words “subject to the other provisions of this Chapter”, it is made clear that other provisions of this Chapter, like clause 11, apply to cases under sub-clause (a);

(c) in sub-clause (a), for the words “sale or lease”, the word “contract” has been substituted so that it is made clear that the sub-clause applies only to contracts to sell, lease or hire;

(d) sub-clause (b) is modified so that a plaintiff would also be enabled to require a vendor to get a conveyance from a person who is bound to convey at the request of the vendor;

(e) in sub-clause (c) the addition of the words “wherever necessary” makes it clear that a re-conveyance need be obtained only when it is required under law.

With respect to sub-clause (2), see notes under clause 16.

Clause 13.—This is section 21 of the existing Act with the following amendments:—

(i) in sub-clause (1), clause (c) of section 21 has been omitted as unnecessary in view of section 29 of the Indian Contract Act, 1872;

(ii) clause (f) of section 21 has been omitted in view of clause 8 of the Bill;

(iii) in item (d), the word ‘determinable’ has been substituted for the word ‘revocable’ as the expression ‘revocable contract’ is not accurate;

(iv) clause (e) of section 21 has been incorporated in clause 12 of the Bill;

(v) in item (d) [clause (g) of section 21] the limit of three years, which is artificial and arbitrary, has been omitted, and the proper rule applicable in such cases substituted;

(vi) sub-clause (3) is new and incorporates the exceptional cases in which specific performance is granted, notwithstanding the provisions of sub-clause (1).

Clause 14.—This clause reproduces section 23 with the following modifications—

(i) in sub-clause (b) it is made clear that, in a contract of a personal nature, performance by a third party is not to be imposed on the other party to the contract except where he has accepted such substituted performance;

(ii) sub-clauses (c), (d), (e) and (f) could be substituted by a simple provision providing that a third party to a contract who is entitled to a benefit thereunder or has an interest therein may sue on the contract subject to certain limitations. This substitution would, however, have to await a suitable amendment being made in this behalf in the Contract Act, and the clauses have been reproduced as they stand for the time being;

(iii) in sub-clauses (g) and (h) the word 'public' has been omitted since the nature of these provisions is such that they should apply to all companies. Further in sub-clause (h) it is provided that the contract would be enforceable by or against a company only if it has accepted the contract and has signified its acceptance to the other party to the contract.

Clause 15.—This is section 24 of the existing Act with the following modifications:—

(i) in sub-clause (a) for the words "is not entitled", the words "would not be entitled" have been substituted in order to make the meaning clear;

(ii) in sub-clause (b), following the principles enunciated by case-law, it has been provided that specific performance cannot be enforced where the plaintiff has acted in fraud of the contract or acts at variance with or in subversion of the relationship intended to be established by the contract;

(iii) clause (c) of section 24 has been omitted as unnecessary in view of Order II, r. 2 of the Code of Civil Procedure, 1908;

(iv) clause (d) of existing section 24 gives effect to a provision of English law as it stood under a Statute of the sixteenth century, but the law has since been changed. A prior settlement of property would divest the title of the settlor immediately and any conveyance thereafter from the settlor to another, even if it be for consideration, would be ineffective to convey any title. This provision is therefore totally unnecessary;

(v) sub-clause (c) is a new provision which incorporates the principles laid down by case-law that in a suit for specific performance the plaintiff must show that all conditions precedent have been fulfilled and also allege and prove a continuous readiness and willingness to perform the contract on his part from the date of the contract to the time of hearing of the suit. The plaintiff, however, need not prove performance of or over-readiness or willingness to perform non-essential terms;

(vi) by an Explanation it is made clear that it is not essential that the plaintiff should tender money payable under a contract, say, for sale to the defendant or to deposit it in court except when so directed. Further, the plaintiff should be entitled to specific performance if he avers performance or readiness or willingness to perform the contract according to its true construction.

Clause 16.—This is section 25 of the existing Act with the following modifications:—

Clause (c) of section 25 is omitted for the reasons given against clause 15 in respect of the omission of clause (d) of section 24.

Although section 25 refers to both movable and immovable property, it is not clear how far sections 18 and 25 apply to contracts for the letting of movable property. Sub-clause (1) is therefore confined to immovable property, but sub-clause (2) provides [as in the case of clause 12(2)] that the provisions of sub-clause (1) will also apply to movable property in so far as such application is possible.

Clause 17.—Clause 17 is section 26 with the following changes:—

(i) sub-clause (a) amalgamates clauses (a), (b) and (c) of section 26;

(ii) in sub-clause, (c) for the words “contracted to vary”, the words “varied its terms” have been substituted as a drafting change.

Clause 18 is section 27 of the existing Act with the following changes:—

(i) in sub-clause (d), the word “public” has been omitted as this provision should apply to all companies;

(ii) sub-clause (e) has been modified on the lines proposed in respect of section 23(b). [See notes under clause 14(h)].

Clause 19.—This clause reproduces section 22 of the Act with the following modifications—

(i) sub-section (2) (a) is item I of section 22. The existing provision is somewhat vague. There are circumstances in which a court of equity refuses to decree specific performance on the ground of unfairness even though in law the circumstances are not such as to render the contract voidable. The scope of this sub-clause is therefore widened to provide that the unfair advantage may be due to circumstances which may not be sufficient to render the contract voidable;

(ii) the two Explanations based on case-law seek to explain in what cases unfair advantage or hardship shall not be presumed and with reference to what circumstances hardship should ordinarily be determined;

(iii) the doctrine that a contract to be specifically enforceable must as a general rule be mutual has now very little scope for application in India. That doctrine is now being abolished and in its place, the following principle is laid down, namely, that the fact that the remedy of specific enforcement is not available to one party is not a sufficient reason for refusing it to the other party.

Sub-clause (4) gives effect to this new principle.

Clause 20.—This is section 19 of the existing Act with the following changes:—

(i) sub-clause (4) makes it clear that the compensation to be awarded is to be determined on the basis of section 73 of the Indian Contract Act, 1872;

(ii) it is provided in sub-clause (5) that compensation has to be specifically asked for before it can be granted, and that the court should allow the plaintiff to amend his plaint at any stage of the proceeding for the purpose.

Clause 21.—Clause 21 is new. Sub-clause (1) (a) introduces a rule, now settled by judicial decisions, that in order to avoid a multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking the right to possession accrues only when specific performance is decreed.

In some cases it has been held that the court may, in a suit for specific performance, direct a refund of earnest money while refusing

specific performance if the facts disclose a case for such a refund. Sub-clause (b) gives effect to this and also permits the plaintiff to claim any other relief.

It is, however, provided that any such relief will not be granted unless a claim in that behalf is made by the plaintiff either initially or by an amendment at a later stage, but that does not prejudice his right to compensation under clause 20.

Clause 22.—This is section 20 of the existing Act amplified so as to codify the law on the subject. In applying section 20 courts have tried to ascertain the intention of the parties, that is, whether the party bound to performance has an alternative choice given to him by the contract, to perform or to pay the agreed sum; or whether he is bound to do a certain thing, with a penal sum or sum by way of liquidated damages attached as security. In the latter case, the court, notwithstanding the penal clause, enforces performance if the contract be such that without the penal clause it would have been proper to enforce specific performance.

Clause 23 is section 29 of the existing Act. Provisions have been included in the Bill enabling the plaintiff to ask for reliefs such as refund of earnest money, etc., and by way of abundant caution it is made clear in this clause that the dismissal of a suit for specific performance shall not bar a suit for any relief other than damages.

Clause 24 is section 30 of the existing Act. After the passing of the Arbitration Act, 1940, the provisions of this clause should be confined to cases of arbitration under other laws the operation of which is saved by sections 46 and 47 of the Arbitration Act, 1940. As respects cases to which the Arbitration Act, 1940, applies, that Act prescribes the procedure to be followed for their enforcement.

Section 27A of the existing Act is omitted for the reason that suitable provision is to be made in this behalf in the Registration Act and section 28 has been omitted for the reason the material provisions thereof have been incorporated in their appropriate places in the Bill.

Clause 25.—This is section 31 of the existing Act with the following modifications:—

- (i) under section 31 of the Companies Act, 1956, the articles of association of a company may be altered by the company by special resolution, and it is, therefore, advisable to exclude articles of association from the scope of this clause;

(ii) it is provided in sub-clause (1) that the relief of rectification may be obtained not only in a suit specifically brought for the purpose as at present, but also in a suit in which any right arising under the contract or other instrument is in issue. It is further provided that the relief will be open to either party but only if it is specifically asked for in his pleading whether initially or by amendment;

(iii) section 32 of the existing Act has been omitted as it is ambiguous; and if it means that the court will not rectify an invalid instrument, it is not necessary;

(iv) section 33 of the existing Act has been omitted as unnecessary as this provision seeks to merely enjoin the court to discover the real intention of the parties. In any event, clause 25 of the Bill renders this section unnecessary;

(v) section 34 of the existing Act has been incorporated in sub-clause (3).

Clause 26.—This is section 35 of the existing Act with the following modifications:—

(i) section 35(c) of the existing Act and the two paragraphs succeeding it have been omitted in view of clause 27 of this Bill; otherwise sub-clause (1) is a reproduction of section 35;

(ii) sub-clause (2) codifies the principles followed by courts in refusing to rescind a contract;

(iii) the requirement of "writing" at the beginning of section 35 has been omitted by the Transfer of Property Act, 1882, in relation to territories where that Act is in force; Hence the Explanation.

Clause 27.—This is new. Under section 35(c) of the existing Act, the vendor or lessor has the option of bringing a separate suit for the rescission of a contract or to apply for rescission in the same suit under the third paragraph of the section, but there is no reason why the vendor or lessor should be allowed to harass the other party in a separate proceeding when the relief of rescission can be made available in the same suit. At the same time suitable reliefs should also be made available to the purchaser or lessee when he makes the payments due, but the vendor or lessor does not comply with the terms of the decree. The new clause therefore seeks to provide complete relief to both the parties in terms of the decree for specific performance in the same suit without having to resort to separate proceedings.

Section 36 of the existing Act has been omitted as it is in conflict with section 22 of the Indian Contract Act, 1872, and does not appear to enshrine any sound principle.

Clause 28.—Clause 28 is section 37 of the existing Act.

Clause 29.—This is section 38 of the existing Act amplified to provide that while decreeing rescission the court might direct not only payment of compensation to the defendant but also restoration of any benefit received by the plaintiff under the contract.

Clause 30.—This is section 39 of the existing Act.

Clause 31.—This is section 40 of the existing Act.

Clause 32.—Under section 41 of the existing Act a plaintiff who obtains cancellation of an instrument may be required to make compensation to the defendant. This provision has been expanded to provide for the following matters:—

(i) the plaintiff may also have to restore any benefit which he may have obtained under the instrument;

(ii) the above principle has been extended to apply in favour of a plaintiff in a case where the defendant successfully resists a suit on the ground that it is void or that it is voidable and he has avoided it;

(iii) it is, however, provided that in the case of a contract, which is void by reason of the defendant being a minor or lunatic at the time of the contract, the defendant must restore any benefit, whether proprietary or monetary, which he has actually received under the contract. There is, however, no question of any liability for making compensation in such a case.

Clause 33.—This is section 42 of the existing Act.

Clause 34 is section 43 of the existing Act.

Clause 35.—This reproduces section 52 of the existing Act.

Clause 36.—This reproduces section 53 of the existing Act.

Clause 37.—This is section 54 of the existing Act with the following changes:—

(i) for the word “applicant”, the word “plaintiff” has been substituted as the former expression is inaccurate;

(ii) section 54(d) of the Act has been omitted for the reasons given against clause 9 in respect of the omission of section 12 (d),

Clause 38.—This is section 55 of the existing Act.

Clause 39.—This clause is new and gives effect to the principles already accepted that the court can, in an action for injunction, exercise its discretion to award damages either in addition to or in substitution for an injunction.

Clause 40.—This is section 56 of the existing Act with the following changes:—

(i) the expression “to stay proceedings” in clauses (a), (b) and (c) of section 56 has given rise to a controversy as to whether any injunction can be directed against the court itself before which the proceeding is pending. An injunction is a remedy *in personam* which is directed against the litigant and this is now made clear;

(ii) section 56(d) has been omitted; the first part of it is inconsistent with article 361(1) of the Constitution, and the second part is unnecessary.

Clause 41.—This is section 57 of the existing Act.

Clause 42.—This clause makes a consequential amendment in the Arbitration Act, 1940.

M. N. KAUL,
Secretary.